

Court File No. CV-20-00636417  
CL File No. \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E N:

ECOHOME FINANCIAL INC.

Plaintiff

and

UTILECREDIT CORP. and JOHN NASSAR

Defendants

**MOTION RECORD  
Motion for Appointment of Receiver  
Returnable May 27, 2020**

May 22, 2020

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**ONTARIO  
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B E T W E N:

ECOHOME FINANCIAL INC.

Plaintiff

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UTILECREDIT CORP. and JOHN NASSAR

Defendants

**NOTICE OF MOTION**  
*(re: appointment of receiver)*

**THE PLAINTIFF**, EcoHome Financial Inc. (“**EcoHome**”), will make a motion to a judge presiding over the Commercial List on May 27, 2020, at 10:00 a.m. or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario with attendance by Zoom Videoconferencing:

<https://zoom.us/j/95336679103?pwd=YnQxM1QwMDIwYUVVNY3FEMERsT3ZJQT09>

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR**

- a) an order abridging the time for and validating the service of this Notice of Motion and the Plaintiff’s Motion Record in support of this Motion, and dispensing with further service of the Notice of Motion and Motion Record, if necessary;
- b) an order transferring this matter to the Commercial List;

- c) an order appointing RSM Canada Limited (“**RSM**”) as receiver and manager of all of the assets, properties and undertakings of the Defendant, Utilecredit Corp. (“**Utilecredit**”) pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), without security;
- d) costs of the motion on a full indemnity basis; and
- e) such further and other relief as counsel may request and this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. EcoHome is a corporation incorporated pursuant to the laws of the Province of Ontario. EcoHome is in the business of providing financing to consumers for new water heaters, new HVAC equipment, and other new household equipment (“**Equipment**”).
2. Utilecredit is or was in the business of providing financing to customers for Equipment through its own dealers (“**sub-dealers**”), and then syndicating some or all of that financing to larger financing companies, such as EcoHome. Utilecredit was one of EcoHome’s dealers, as it originated Equipment financing contracts and sold its rights under certain of those contracts to EcoHome.
3. Utilecredit is directly indebted to EcoHome pursuant to and under the terms of an Amended and Restated Consumer Lease Program Agreement dated as of January 6, 2016 (the “**Program Agreement**”).
4. In accordance with the Program Agreement and its predecessor contracts, EcoHome purchased from Utilecredit, among other assets, Utilecredit’s rights and interests in certain lease contracts that Utilecredit or one of its sub-dealers entered into with third party customers (the “**Customer Contracts**”), which included the right to receive payments from the customers thereunder and the right and interest in the Equipment that is the subject of each Customer Contract.

5. Pursuant to the Program Agreement, Utilecredit is required to maintain a Cash Reserve Account with EcoHome. The Cash Reserve Account is held by EcoHome. The purpose of the Cash Reserve Account is to provide cash security for liabilities that may arise in connection with Customer Contracts purchased by EcoHome.
6. Utilecredit is required to maintain a balance in the Cash Reserve Account equal to 5.0% of the ten-year net outstanding balance owing under the Customer Contracts that Utilecredit sold to EcoHome. This minimum balance for the Cash Reserve Account is referred to as the “**Required Reserve Amount**” under the Program Agreement.
7. Pursuant to section 2.02(a) of the Program Agreement, each time EcoHome purchased Customer Contracts under the Purchase Agreement, EcoHome held back 5.0% of the purchase price and credited the amount to the Cash Reserve Account. From time to time, EcoHome would draw upon the Cash Reserve Account as permitted pursuant to the Program Agreement such that the net balance would fall below the Required Reserve Amount.
8. Under the Program Agreement, Utilecredit is required to remit a cash payment to EcoHome to replenish the Cash Reserve Account if *at any time* the balance of the Cash Reserve Account falls below the Required Reserve Amount. Section 2.02(a) of the Program Agreement provides, in relevant part:

If at any time the amount of funds in the Cash Reserve Account falls below 5.0% of the Net Outstanding Balance for all Lease Contracts which are assigned to the Purchaser [EcoHome] hereunder, the Seller [Utilecredit] will remit to the Purchaser for deposit to the Cash Reserve Account cash until such time as the Cash Reserve Account has been restored to the Required Reserve Amount.
9. The Program Agreement provides that the net balance in the Cash Reserve Account (i.e. the Required Reserve Amount) shall not fall below 5.0% of the ten-year net outstanding balance owing under the Customer Contracts.
10. Based on the figures as at March 31, 2020, the Required Reserve Amount is \$376,614.10, which should be the balance of the Cash Reserve Account.

11. As a result of debits to the Cash Reserve Account relating to uncollectible Customer Contracts, receipt of customer payments and other ancillary adjustments in favour of Utilecredit or EcoHome as provided for in the Program Agreement, the Cash Reserve Account is in a deficit position of \$979,691.18 as of March 31, 2020.
12. Accordingly, Utilecredit owes EcoHome \$1,356,305.28 as of March 31, 2020 to pay for the amounts owing to EcoHome and to bring the Cash Reserve Account up to the Required Reserve Amount.
13. Utilecredit's obligations under the Program Agreement are secured by a General Security Agreement in favour of EcoHome dated August 12, 2015 (the "**Security Agreement**")
14. By the Security Agreement, Utilecredit granted EcoHome security over all its present and future assets and undertakings, and all proceeds thereof, as more particularly described in section 1 of the Security Agreement. The security interest granted under the Security Agreement secures all present and future obligations, indebtedness and liability of Utilecredit to EcoHome, including all costs and expenses (including legal fees and expenses) incurred by EcoHome in connection with its dealings with Utilecredit.
15. The Security Agreement was registered pursuant to the *Personal Property Security Act* (Ontario) (the "**PPSA**") on August 18, 2015.
16. The events of default under the Security Agreement include, among other things, Utilecredit's failure to pay any obligation, debt, or liability owing under the Program Agreement, or any part thereof.
17. The Security Agreement provides that in order to enforce its security, EcoHome may, among other things, exercise any of its rights and remedies at law and may appoint a receiver or receiver and manager (or apply to this Honourable Court to do so).

18. EcoHome has demanded repayment of the indebtedness four times since February 14, 2020. Mr. Nassar, on behalf of Utilecredit, has indicated that Utilecredit is insolvent and that payment of the indebtedness is not forthcoming.
19. On February 14, 2020, EcoHome requested payment of the amount due and owing from Utilecredit. On February 27, 2020, EcoHome again requested payment of the amount due and owing from Utilecredit. John Nassar, the sole director and officer of Utilecredit, responded and advised that Utilecredit is insolvent and that it had no funds to settle the amount owing.
20. On March 3, 2020, EcoHome, through counsel, made a further demand upon Utilecredit (to Mr. Nassar's attention) requiring that it repay the sum due. At the same time, EcoHome, through counsel, delivered a Notice of Intention to Enforce a Security pursuant to section 244 to the *Bankruptcy and Insolvency Act (Canada)*.
21. On May 19, 2020, EcoHome, through counsel, again demanded payment of the indebtedness and copies of Utilecredit's financial statements as required pursuant to the Program Agreement. By reply email that same day, Mr. Nassar indicated that Utilecredit would not be providing the financial statements and that Utilecredit is insolvent.
22. As of March 31, 2020, \$1,356,305.28, plus interest and costs, remains owing, due and unpaid in connection with the amounts owing to bring the Cash Reserve Account up to the Required Reserve Amount. This amount is in addition to \$233,460.22 in additional direct losses that Utilecredit owes to EcoHome separate and apart from deficiency in the Cash Reserve Account, plus all fees, costs and expenses incurred and to be incurred by EcoHome to pursue repayment of the indebtedness.
23. As a result of Utilecredit's ongoing failure to pay the amounts owing under the Program Agreement, Utilecredit continues to be in default under the Program Agreement and the Security Agreement, and EcoHome's security interest under the Security Agreement has become enforceable at EcoHome's discretion.

24. Based upon searches conducted against Utilecredit under the PPSA, EcoHome is the first-ranking secured creditor, ranking in priority to the only other secured creditor with a PPSA registration, Enbridge Gas Distribution Inc.
25. The appointment of a receiver is, in all the circumstances, convenient, just, equitable and appropriate.
26. In these circumstances, the appointment of a receiver at the request of EcoHome – the senior secured creditor of Utilecredit – to enable the realization of its collateral and seek repayment of its indebtedness is appropriate. The Program Agreement and the Security Agreement permit EcoHome to appoint a receiver over the assets and property of Utilecredit where Utilecredit is in default of its obligations under the Program Agreement.
27. Section 243 of the BIA.
28. Section 101 of the CJA.
29. Rules 3.02(1), 37 and 41 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.
30. Such further and other grounds as counsel may advise and this Honourable Court permits.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- a) Affidavit of Brent Houlden sworn May 22, 2020;
- b) The consent of RSM to be filed; and
- c) Such further and other evidence that counsel may advise and this Honourable Court permit.

May 22, 2020

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Lawyers for the Plaintiff



**ECOHOME FINANCIAL INC.**  
Plaintiff

**UTILECREDIT CORP. et al.**  
Defendants

Court File No. CV-20-00636417

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

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**NOTICE OF MOTION**  
*(re: appointment of receiver)*

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Court File No. CV-20-00636417

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ECOHOME FINANCIAL INC.

Plaintiff

and

UTILECREDIT CORP. and JOHN NASSAR

Defendants

**AFFIDAVIT OF BRENT HOULDEN**  
(sworn May 22, 2020)

I, Brent Houlden, of the City of Toronto, in the Province of Ontario, MAKE OATH and say:

1. I am the Chief Executive Officer of EcoHome Financial Inc. ("**EcoHome**"). EcoHome is a corporation incorporated pursuant to the laws of the Province of Ontario. EcoHome is in the business of providing financing to consumers for new water heaters, new HVAC equipment, and other new household equipment ("**Equipment**").

2. EcoHome is a secured creditor of Utilecredit Corp. ("**Utilecredit**" or the "**Debtor**"), the respondent herein, and I am directly involved in the management of EcoHome's arrangements with the debtor. As such, I have personal knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge of the matters set out herein, I state the source of my information and, in all such cases, believe it to be true.

3. I am swearing this affidavit in support of an application by EcoHome pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, for an order, amongst other things, appointing RSM Canada Limited (“**RSM**”) as receiver and manager of the assets, undertakings, and property of the Debtor (the “**Property**”).

### **Description of the Debtor’s Business**

4. The Debtor is a corporation incorporated pursuant to the laws of the Province of Ontario. The Debtor’s corporation profile report is attached to my Affidavit as **Exhibit “A”**.

5. The Debtor’s corporate profile report indicates that its registered office is located at Suite 302, 301 The East Mall in Toronto, Ontario. I believe that the corporate profile report contains a transcription error and that the Debtor’s registered office is in fact located at Suite 301, 302 The East Mall in Toronto, Ontario, which is Utilecredit’s address on the Program Agreement defined and discussed below.

6. The corporate profile report indicates that John Nassar is the sole director and officer of the Debtor.

7. It is my understanding that the Debtor is or was in the business of providing financing to customers for Equipment through its own dealers (“**sub-dealers**”), and then syndicating some or all of that financing to larger financing companies, such as EcoHome. Utilecredit was one of EcoHome’s dealers, as it originated Equipment financing contracts and sold its rights under certain of those contracts to EcoHome.

### **The Program Agreement and the Cash Reserve Account**

8. The Debtor is directly indebted to EcoHome pursuant to and under the terms of an Amended and Restated Consumer Lease Program Agreement dated as of January 6, 2016 (the “**Program Agreement**”). A copy of the Program Agreement is attached to my Affidavit as **Exhibit “B”**.

9. In accordance with the Program Agreement and its predecessor contracts, EcoHome purchased from the Debtor, among other assets, the Debtors’ rights and interests in certain lease contracts that the Debtor or one of its sub-dealers entered into with third party customers (the “**Customer Contracts**”), which included the right to receive payments from the customers thereunder and the right and interest in the Equipment that is the subject of each Customer Contract.

10. The Program Agreement sets out the mechanism to determine the price at which EcoHome would purchase a Customer Contract. However, the ultimate cash amount that EcoHome would actually transfer to Utilecredit for a particular purchase was the purchase price determined in accordance with the Program Agreement, minus:

- (a) the amount Utilecredit was required to deposit into a cash reserve account with EcoHome (the “**Cash Reserve Account**”) (discussed further below); and
- (b) any amounts then due and payable by Utilecredit to EcoHome.

11. Following the sale of a Customer Contract to EcoHome, the customer would pay the monthly payments due under the Customer Contract directly to EcoHome over the period of the lease (which was typically approximately 10 years).

12. Pursuant to the Program Agreement, Utilecredit is required to maintain a Cash Reserve Account with EcoHome. The Cash Reserve Account is held by EcoHome. Utilecredit is required to maintain a balance in the Cash Reserve Account equal to 5.0% of the ten-year net outstanding balance owing under the Customer Contracts that Utilecredit sold to EcoHome. This minimum balance for the Cash Reserve Account is referred to as the “**Required Reserve Amount**” under the Program Agreement.

13. Pursuant to section 2.02(a) of the Program Agreement, each time EcoHome purchased Customer Contracts under the Purchase Agreement, EcoHome held back 5.0% of the purchase price and credited the amount to the Cash Reserve Account. From time to time, EcoHome would draw upon the Cash Reserve Account as permitted pursuant to the Program Agreement such that the net balance would fall below the Required Reserve Amount.

14. Under the Program Agreement, Utilecredit is required to remit a cash payment to EcoHome to replenish the Cash Reserve Account if at any time the balance of the Cash Reserve Account falls below the Required Reserve Amount. Section 2.02(a) of the Program Agreement provides, in relevant part:

If at any time the amount of funds in the Cash Reserve Account falls below 5.0% of the Net Outstanding Balance for all Lease Contracts which are assigned to the Purchaser [EcoHome] hereunder, the Seller [the Debtor] will remit to the Purchaser for deposit to the Cash Reserve Account cash until such time as the Cash Reserve Account has been restored to the Required Reserve Amount.

15. During any period in which EcoHome was purchasing new Customer Contracts from Utilecredit, the replenishment of the Cash Reserve Account would take place by EcoHome withholding from the purchase price the amounts needed to top up the Cash Reserve Account

and amounts needed to compensate EcoHome for amounts owing to it under the Program Agreement (which amounts would otherwise have been drawn from the Cash Reserve Account). However, the fact that, in some circumstances in the past, the necessary payments and top-ups could be taken from the purchase price for new Customer Contracts does not limit Utilecredit's obligation to pay EcoHome the amounts owing under the Program Agreement. Utilecredit is required to "top up" the Cash Reserve if *at any time* the balance falls below the Required Reserve Amount.

16. The Program Agreement provides that the net balance in the Cash Reserve Account (i.e. the Required Reserve Amount) shall not fall below 5.0% of the ten-year net outstanding balance owing under the Customer Contracts. Based on the figures as at March 31, 2020, the Required Reserve Amount is \$376,614.10, which should be the balance of the Cash Reserve Account.

17. Pursuant to section 2.04(a) of the Program Agreement, EcoHome is permitted to debit (i.e. draw from) the Cash Reserve Account when a Customer Contract that EcoHome purchased from Utilecredit becomes a "Defaulted Lease" for purposes of the Program Agreement. A Defaulted Lease means any Customer Contract in respect of which three (3) or more customer lease payments are in arrears or which, for any other reason, has been identified by the Debtor or EcoHome as uncollectible. The amount to be debited in respect of a Customer Contract that becomes a Defaulted Lease (an "**Uncollectable Customer Contract**") is the Net Outstanding Balance of the Uncollectable Customer Contract, which is the present value of the remaining payments under the Uncollectable Customer Contract, calculated at a discount rate of 7.95% per annum.

18. In some circumstances, EcoHome has subsequently received customer payments in respect of Uncollectable Customer Contracts, in which case the net amount recovered is credited back in Utilecredit's favour to the Cash Reserve Account. The calculation of the current position of the Cash Reserve Account also includes other adjustments in favour of Utilecredit pursuant to the Program Agreement, including payments received on Account of Annual Increases and End of Term Payments (as those terms are defined in the Program Agreement) received by EcoHome.

19. A Lease Reserve Reconciliation summarizing, among other things, the status of the Cash Reserve Account as of March 31, 2020 is attached to my Affidavit as **Exhibit "C"**.

20. As a result of debits to the Cash Reserve Account relating to Uncollectible Customer Contracts and other ancillary adjustments in favour of Utilecredit or EcoHome, the Cash Reserve Account is in a deficit position of \$979,691.18 as of the date of this affidavit. To bring the Cash Reserve Account up to the Required Reserve Amount, Utilecredit is required to remit \$1,356,305.28 in cash to EcoHome, as set out of the following table:

Required Reserve Amount	\$376,614.10
Present Balance of Cash Reserve Account	(\$979,691.18)
Difference between Present Balance of Cash Reserve Account and Required Reserve Amount	\$1,356,305.28

21. Accordingly, Utilecredit owes EcoHome \$1,356,305.28 to pay for the amounts owing to EcoHome and to bring the Cash Reserve Account up to the Required Reserve Amount.

#### **Additional Losses Under the Program Agreement**

22. In addition to the amount owing by Utilecredit in connection with the Cash Reserve Account, EcoHome also incurred direct losses resulting from other breaches by Utilecredit of the



Program Agreement, totalling \$233,460.22. In addition to its breaches relating to maintaining a sufficient balance in the Cash Reserve Account, Utilecredit is in breach of other obligations under the Program Agreement, including, without limitation:

- (a) Section 6.02 of the Program Agreement, which states that Utilecredit will be responsible for servicing and administration of the Equipment for the term of the agreement. EcoHome has incurred expenses relating to the servicing and administration of the Equipment as a result of Utilecredit's failure to do so; and
- (b) Section 4.01(j) of the Program Agreement contains representations and warranties that Utilecredit made to EcoHome in respect of each Customer Contract to induce EcoHome to purchase the Customer Contract. Notwithstanding these representations, Utilecredit or its sub-dealers entered into Customer Contracts that resulted in their customers making allegations of misrepresentations and fraud against Utilecredit or its sub-dealers, or otherwise asserting rights to contest the validity or enforceability of the Customer Contracts. This resulted in certain Customer Contracts becoming Uncollectible Customer Contracts (resulting in debits to the Cash Reserve Account) and EcoHome incurring enforcement, administration, legal and other fees in connection with addressing the disputed or contested Customer Contracts.

23. The direct losses incurred by EcoHome as a result of Utilecredit's breaches and misrepresentations are comprised of costs associated with filing notices of security interest (NOSIs), amounts paid to Enbridge Gas Distribution Inc. ("**Enbridge**") for providing billing services associated with the Customer Contracts, and other collection, service and legal

expenses. These losses are also detailed in the Lease Reserve Reconciliation attached as Exhibit C to my Affidavit.

24. Pursuant to Section 5.01(h) of the Program Agreement, Utilecredit must reimburse EcoHome on demand for all reasonable out-of-pocket expenses incurred by or on behalf of EcoHome including, without limitation, the reasonable fees and disbursements of counsel to EcoHome in connection with the enforcement of the rights of EcoHome under the Program Agreement. Additionally, Utilecredit is liable to EcoHome for these direct losses at law and in accordance with the Indemnity (as defined and described below).

25. Accordingly, the total indebtedness of Utilecredit to EcoHome as at March 31, 2020 is \$1,589,765.50 (being the \$1,356,305.28 in respect of the deficiency in the Cash Reserve Account and \$233,460.22 in additional direct losses), plus interest and all costs incurred and to be incurred by EcoHome in enforcing its rights under the Program Agreement and obtaining repayment of the indebtedness.

#### **Indemnity by Utilecredit and Its Principal**

26. Pursuant to subsection 5.01(j) of the Program Agreement (the “**Indemnity**”), each of Utilecredit and its principal, John Nassar (the “**Principal**”) indemnified EcoHome against all damages, losses, claims, liabilities, costs, and expenses incurred by EcoHome arising out of or as a result of, among other things, (i) any representation or warranty made by Utilecredit in the Program Agreement which was incorrect when made, or (ii) the failure of Utilecredit to perform or observe any of its covenants, duties or obligations under the Program Agreement or any related agreements (including the Security Agreement).

27. Pursuant to the Indemnity, Utilecredit and the Principal are jointly and severally liable to EcoHome for the \$1,589,765.50 owing to EcoHome under the Program Agreement.

### **Security Granted by Utilecredit in Favour of EcoHome**

28. Utilecredit's obligations under the Program Agreement are secured by a General Security Agreement dated August 14, 2015 (the "**Security Agreement**"). A copy of the Security Agreement is attached to my Affidavit as **Exhibit "D"**. By the Security Agreement, Utilecredit granted EcoHome security over all its present and future assets and undertakings, and all proceeds thereof, as more particularly described in section 1 of the Security Agreement. The security interest granted under the Security Agreement secures all present and future obligations, indebtedness and liability of Utilecredit to EcoHome, including all costs and expenses (including legal fees and expenses) incurred by EcoHome in connection with its dealings with Utilecredit.

29. The Security Agreement was registered pursuant to the *Personal Property Security Act* (Ontario) (the "**PPSA**") on August 18, 2015.

### **Other Secured Creditors**

30. A copy of the PPSA search results for Utilecredit as of May 21, 2020 is attached to my Affidavit as **Exhibit "E"**.

31. These PPSA search results show that there are only two PPSA registrations in respect of Utilecredit – the EcoHome registration and a registration in favour of Enbridge registered on April 26, 2019. The EcoHome registration is earlier-in-time than the Enbridge registration.

## Default and Demand

32. The losses EcoHome has suffered in connection with the Program Agreement have accrued over a period of approximately two years and show no sign of self-correcting through EcoHome's on-going collection efforts. EcoHome's losses under the Program Agreement will continue to accrue if more Customer Contracts become uncollectible or if EcoHome incurs additional expenses due to continuing and future breaches by Utilecredit of representations, warranties and covenants under the Program Agreement.

33. On February 14, 2020, EcoHome's Senior Vice President, Operations, Peter Soon, e-mailed John Nassar at my direction to advise him that Utilecredit's debt to EcoHome as of December 31, 2019 was \$1,554,763.36 and attached a record of the Cash Reserve Account as of December 31, 2019. Mr. Soon offered to meet with Mr. Nassar to discuss the amount owing. Mr. Nassar did not respond to Mr. Soon.

34. On February 27, 2020, I had Mr. Soon write to Mr. Nassar again to advise him that \$1,554,763.36 was due and owing by Utilecredit and that EcoHome required payment forthwith. Mr. Nassar responded advising Mr. Soon that Utilecredit is insolvent and that it had no funds to settle the amount owing:

Mr. Soon, UtileCredit Corporation is insolvent. The company has no funds to settle this amount.

A copy of Mr. Soon's e-mail exchange with Mr. Nassar dated February 27, 2020 is attached to my Affidavit as **Exhibit "F"**.

35. Given Mr. Nassar's response to Mr. Soon's e-mail, EcoHome's counsel made a formal written demand on the Debtor by letter dated March 3, 2020, which demanded payment to

EcoHome of \$1,554,763.36 (being the indebtedness as of December 31, 2019), requested copies of the Debtor's financial statements by March 6, 2020 pursuant to section 5.01 of the Program Agreement, and enclosed a Notice of Intention to Enforce a Security pursuant to subsection 244(1) of the BIA (the "**Notice**"). A copy of that letter and the Notice is attached to my Affidavit as **Exhibit "G"**.

36. Mr. Nassar responded to EcoHome's counsel on March 3, 2020 on behalf of Utilecredit. He said:

Mr. Wiffen, please note that I am the president of UtileCredit Corp. I am in receipt of your letter to the company of today.

I have previously exchanged emails with Mr. Soon on the financial condition of UtileCredit. In addition I turn your attention to section 2.03 of the Program Agreement that talks to the Limited Recourse nature of the program. Furthermore the Cash Reserve top up is a function of the Purchase Transaction process which your client has not engaged in with UtileCredit for many years.

I have not reviewed your GSA so I can't comment on its nature but regardless your client's recourse is as setout [*sic*] above.

37. A copy of Mr. Nassar's e-mail to EcoHome's counsel is attached to my Affidavit as **Exhibit "H"**.

38. Notably, Mr. Nassar appears to not have referred to the entirety of section 2.03. That section provides that, where the Utilecredit is required to indemnify the EcoHome, there is no limitation on the recourse available to EcoHome:

**2.03 Limited Recourse.** Except for the indemnity as set out in Section 5.01(j), it is specifically acknowledged and agreed that Purchaser may, with respect to any Purchase Transaction, only have recourse against the Purchased Assets and the Collateral. In the event that the Seller is required to indemnify Purchaser

pursuant to Section 5.01(j), there shall be no limitation to the recourse of Purchaser to the assets of the Seller. [emphasis added]

39. Utilecredit provided the Indemnity to EcoHome pursuant to section 5.01(j) of the Program Agreement and entered into the Security Agreement pursuant to which it granted EcoHome a security interest over all of its assets and property to secure all of its obligations to EcoHome, including pursuant to the Indemnity. It is not commercially reasonable for Mr. Nassar to attempt to interpret, as he appears to, section 2.03 of the Program Agreement in a way that either ignores the granting of the security interest or attempts to nullify the granting of the security interest.

40. With respect to Mr. Nassar's suggested defence that "the Cash Reserve top up is a function of the Purchase Transaction process", he confuses the process of EcoHome purchasing Customer Contracts with the purpose of the Cash Reserve Account. While it is true that the Cash Reserve Account would be adjusted on any purchase of a Customer Contract, its continued existence and application is not dependent on ongoing purchases of new Customer Contracts. The Cash Reserve Account was not created to address future purchases of Customer Contracts, but rather to provide cash security for liabilities that might arise in connection with Customer Contracts that were in fact purchased by EcoHome. This was important because the Customer Contracts are long term contracts (up to ten (10) years) and the Cash Reserve Account mechanism was agreed to and implemented for EcoHome's security to protect against future defaults under already-purchased Customer Contracts and to minimize the risk of the insolvency of Utilecredit (as has now happened over the lifespan of the purchased Customer Contracts).

41. This is why the Program Agreement expressly requires Utilecredit to replenish the Cash Reserve Account "if at any time" the balance of the Cash Reserve Account falls below the

Required Reserve Amount. The Cash Reserve Account is not designed to deal with, nor is it dependent upon, future purchases of Customer Contracts; rather it is designed and is based on the performance (or non-performance) of Customer Contracts that were previously purchased by EcoHome. Thus, the fact that EcoHome has not purchased any new contracts from Utilecredit does not affect the obligations under the Cash Reserve Account.

42. Given that there has been no payment of any amounts owing by Utilecredit to EcoHome, on May 19, 2020, EcoHome's counsel again wrote to the Debtor repeating its demand for payment of the indebtedness owing to EcoHome and delivery of recent financial statements. A copy of the letter from EcoHome's counsel to Utilecredit dated May 19, 2020 is attached to my Affidavit as **Exhibit "I"**.

43. The same day, Mr. Nassar responded to EcoHome's counsel on behalf of Utilecredit. Mr. Nassar indicated that Utilecredit is insolvent and will not be providing EcoHome with the financial statements requested by EcoHome:

Mr. Wiffen, I think your letter sets out clearly the position of your client and in fact the position of Utilecredit Corp. I am not sure what can be do further? We don't want to make this harder on both parties where your client spends good money to confirm what we have already told them. We won't be providing financial statements, partly because your client is in breach of their reporting obligations to Utilecredit and partly because the statements are not available. We will provide a letter from our account to confirm that the company is in fact insolvent, as a compromise. Please advise.

44. A copy of Mr. Nassar's May 19, 2020 e-mail to EcoHome's counsel is attached to my Affidavit as **Exhibit "J"**. Mr. Nassar's proposal was not acceptable to EcoHome and EcoHome is not in breach of its reporting obligations to Utilecredit.

45. Mr. Nassar and EcoHome's counsel have engaged in further email correspondence in recent days, copies of which are attached to my Affidavit as **Exhibit "K"**. However, Utilecredit has not, to date, repaid the indebtedness owing to EcoHome.

### **Appointment of a Receiver**

46. As of the time of swearing this affidavit, the Debtor has failed to make any payment in accordance with the repeated demands by EcoHome described above. Mr. Nassar on behalf of Utilecredit has repeatedly indicated that Utilecredit is insolvent and does not have the funds to settle the obligations.

47. EcoHome's losses under the Program Agreement have steadily increased over the past two years. EcoHome seeks to take the steps necessary to enforce its rights under the Program Agreement and the Security Agreement and realize on its security.

48. Utilecredit's breaches of the Program Agreement, including its failure to replenish the Cash Reserve Account, constitute "Termination Events" under the Program Agreement. Pursuant to section 5.02 of the Program Agreement, upon the occurrence of a Termination Event, EcoHome is permitted to, among other things, take any action, suit, remedy or proceeding authorized or permitted by the Program Agreement, any of the "Security" (including the Security Agreement), or by law or equity. Section 14 of the Security Agreement permits EcoHome to appoint a receiver or receiver and manager over the assets and property of Utilecredit if Utilecredit is in default of its obligations under the Program Agreement.



49. EcoHome considers it reasonable and necessary to enforce its security in an effort to recover the indebtedness owed by the Debtor to EcoHome, and it is within EcoHome's rights under the Program Agreement and Security Agreement to do so.

50. In the circumstances, I believe it is just and equitable that a receiver be appointed. Utilecredit has acknowledged that it is insolvent and cannot repay the indebtedness owing to EcoHome. The appointment of a receiver is necessary for the preservation of the Debtor's estate and to enable EcoHome to pursue repayment of the indebtedness. EcoHome believes that the appointment of a receiver would enhance the prospect of recovery by EcoHome and protect all stakeholders.

51. EcoHome proposes that RSM be appointed as Receiver. RSM is a licenced insolvency trustee and is familiar with the circumstances of the Debtor and its arrangements with EcoHome.

SWORN before me virtually at the  
City of Toronto, in the Province of  
Ontario on May 22, 2020



A Commissioner, etc.  
Michael Wilson



Brent Houlden

A

**THIS IS EXHIBIT "A"  
TO THE AFFIDAVIT OF BRENT HOULDEN  
SWORN BEFORE ME VIRTUALLY THIS 22<sup>ND</sup> DAY OF MAY, 2020**

A handwritten signature in blue ink, appearing to read "Michael", is written above a horizontal line.

Commissioner for Taking Affidavits

Request ID: 024555460  
 Transaction ID: 75484760  
 Category ID: UN/E

Province of Ontario  
 Ministry of Government Services

Date Report Produced: 2020/05/21  
 Time Report Produced: 16:27:32  
 Page: 1

## CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Incorporation Date
2476345	UTILECREDIT CORP.	2015/07/24
		Jurisdiction
		ONTARIO
		Former Jurisdiction
		NOT APPLICABLE
Corporation Type	Corporation Status	
ONTARIO BUSINESS CORP.	ACTIVE	
Registered Office Address		Date Amalgamated
JOHN NASSAR 301 THE EAST MALL		NOT APPLICABLE
		Amalgamation Ind.
		NOT APPLICABLE
		New Amal. Number
		NOT APPLICABLE
		Notice Date
		NOT APPLICABLE
		Letter Date
		NOT APPLICABLE
Mailing Address		Revival Date
2428 HENSALL STREET		NOT APPLICABLE
		Continuation Date
		NOT APPLICABLE
		Transferred Out Date
		NOT APPLICABLE
		Cancel/Inactive Date
		NOT APPLICABLE
		EP Licence Eff.Date
		NOT APPLICABLE
		EP Licence Term.Date
		NOT APPLICABLE
		Date Commenced in Ontario
		NOT APPLICABLE
		Date Ceased in Ontario
		NOT APPLICABLE
		Activity Classification
		NOT AVAILABLE
		Number of Directors
		Minimum
		Maximum
		00001
		00005

Request ID: 024555460  
Transaction ID: 75484760  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2020/05/21  
Time Report Produced: 16:27:32  
Page: 2

## CORPORATION PROFILE REPORT

**Ontario Corp Number**

2476345

**Corporation Name**

UTILECREDIT CORP.

**Corporate Name History**

UTILECREDIT CORP.

**Effective Date**

2015/07/24

**Current Business Name(s) Exist:**

NO

**Expired Business Name(s) Exist:**

NO

**Administrator:****Name (Individual / Corporation)**JOHN  
NASSAR**Address**

2428 HENSALL STREET

MISSISSAUGA  
ONTARIO  
CANADA L5A 2T2**Date Began**

2015/07/24

**First Director**

NOT APPLICABLE

**Designation**

DIRECTOR

**Officer Type****Resident Canadian**

Y

Request ID: 024555460  
Transaction ID: 75484760  
Category ID: UNE

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2020/05/21  
Time Report Produced: 16:27:32  
Page: 3

## CORPORATION PROFILE REPORT

**Ontario Corp Number**

2476345

**Corporation Name**

UTILECREDIT CORP.

**Administrator:****Name (Individual / Corporation)**JOHN  
NASSAR**Address**2428 HENSALL STREET  
  
MISSISSAUGA  
ONTARIO  
CANADA L5A 2T2**Date Began**

2015/07/24

**First Director**

NOT APPLICABLE

**Designation**

OFFICER

**Officer Type**

PRESIDENT

**Resident Canadian**

Y

**Administrator:****Name (Individual / Corporation)**JOHN  
NASSAR**Address**2428 HENSALL STREET  
  
MISSISSAUGA  
ONTARIO  
CANADA L5A 2T2**Date Began**

2015/07/24

**First Director**

NOT APPLICABLE

**Designation**

OFFICER

**Officer Type**

SECRETARY

**Resident Canadian**

Y

Request ID: 024555460  
Transaction ID: 75484760  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2020/05/21  
Time Report Produced: 16:27:32  
Page: 4

## CORPORATION PROFILE REPORT

**Ontario Corp Number**

2476345

**Corporation Name**

UTILECREDIT CORP.

**Last Document Recorded**

Act/Code	Description	Form	Date
CIA	ANNUAL RETURN 2017	1C	2018/07/22 (ELECTRONIC FILING)

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.


ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

B



**THIS IS EXHIBIT "B"  
TO THE AFFIDAVIT OF BRENT HOULDEN  
SWORN BEFORE ME VIRTUALLY THIS 22<sup>ND</sup> DAY OF MAY, 2020**

A handwritten signature in blue ink, appearing to be "M. H. N.", is written above a horizontal line.

Commissioner for Taking Affidavits

**AMENDED AND RESTATED CONSUMER LEASE PROGRAM AGREEMENT**

**dated as of January 6, 2016**

**between**

**Utilecredit Corp.**

**as Seller**

**and**

**Ecohome Financial Inc.**

**as Purchaser**

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**THIS AMENDED AND RESTATED CONSUMER LEASE PROGRAM AGREEMENT**, dated as of January 6, 2016 between Utilecredit Corp., a corporation existing under the laws of the Province of Ontario (the “Seller”) and Ecohome Financial Inc., a corporation existing under the laws of the Province of Ontario (the “Purchaser”).

**WHEREAS** the Seller and the Purchaser entered into a consumer lease program agreement dated as of August 14, 2015 (the “**Original Program Agreement**”);

**AND WHEREAS** the Seller and the Purchaser have agreed to effect certain amendments to the Original Program Agreement by way of an amendment and restatement thereof;

**AND WHEREAS** the Seller and the Purchaser have agreed that all Assigned Payments and related HVAC Equipment (as each is defined in the Original Program Agreement) that were purchased by the Purchaser under the Original Program Agreement prior to the date hereof are to become subject to all of the terms and conditions of this amended and restated consumer lease program agreement (the “**Agreement**”);

**WITNESSETH** that, for valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto), it is agreed as follows:

## 1 **DEFINITIONS AND INTERPRETATION**

### 1.01 **Definitions**

In this Agreement the following definitions shall be applicable:

“Affiliate” means, with respect to any person, any other person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such person, and includes any person in like relation to an Affiliate. A person shall be deemed to control another person if such first person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other person, whether through the ownership of voting securities, by contract or otherwise.

“Annual Increases” means any annual increases after the first year of a Lease Contract from the initial regularly-scheduled payments under such Lease Contract.

“Applicable Cash Reserve Amount” means 5.0% of the Total Purchase Price of the Purchased Assets.

“Applicable Law” means, with respect to any person, property, transaction, event or other matter, any law, rule, statute, regulation, order, judgment, decree, treaty, directive or other requirement having the force of law relating or applicable to such person, property, transaction, event or other matter, and shall also include any interpretation thereof by any person having jurisdiction over it or charged with its administration or interpretation.

“Assigned Payments” means, with respect to a Lease Contract, unless otherwise specified in the related Invoice, (a) all regularly-scheduled payments specified to be due during

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the term of such Lease Contract, whether such regularly-scheduled payments are ultimately paid on a regularly-scheduled date, on default, by acceleration, by optional prepayment or otherwise and (b) any Settlement Amount which is required to be paid by Enbridge to the Seller.

“Blocked Account” has the meaning ascribed thereto in Section 6.01.

“Blocked Account Agreement” has the meaning ascribed thereto in Section 6.01.

“Bps” means basis points, with one basis point being equal to 1/100 of 1%.

“Business Day” means any day excluding Saturday, Sunday and any day on which banks are not open for normal business in Toronto, Canada.

“Cash Reserve Account” means the account maintained by Purchaser, into which a portion of each purchase of Lease Contracts specified in Section 2.03 shall be deposited.

“Cash Reserve Amount” at any time means the amount in the Cash Reserve Account at that time.

“Collateral” means:

(a) all rights, powers, remedies and other benefits of the Seller under all present and future Lease Contracts, including the Seller’s rights to and interest in all present and future amounts payable under any Lease Contract (but excluding all such amounts that have been validly purchased by Purchaser pursuant hereto), all rights in or to payments under all present and future insurance policies maintained by any Customer or by the Seller in respect of any of such Lease Contracts (to the extent the same indemnify for loss or damage to any Equipment that is the subject matter thereof), the benefit of all covenants with respect to any such Equipment by the related Customer (including all indemnities and covenants with respect to maintenance and repair, use and insurance obligations, except to the extent that the same indemnify against liability to others), all rights in or to all present and future security deposits made by any Customer in connection with any of such Lease Contracts, the right of the Seller to ask, demand, sue for, collect, receive and enforce any and all monies now or hereafter payable under any of such Lease Contracts and to enforce all other covenants, obligations, rights and remedies thereunder, except to the extent that any of such rights have been validly purchased by Purchaser pursuant hereto or indemnify against liability to others;

(b) all monies now or at any time or from time to time hereafter held by Purchaser and recorded in any Cash Reserve Account and all investments made from time to time with such monies, including all renewals thereof, accretions thereto, substitutions therefor, and all interest, income and revenue arising therefrom or by virtue thereof;

(c) all other rights or interest of any kind whatsoever of the Seller under or in connection with any Lease Contracts, Related Assets or Assigned Payments not otherwise included in the Collateral and which Purchaser has not acquired ownership of by virtue of or in connection with this Agreement; and

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(d) all Proceeds of, from or with respect to any or all of the foregoing.

“Contested” means contested in good faith by appropriate proceedings promptly initiated and diligently conducted.

“Contractual Obligation” means, with respect to any person, any provision of any agreement, instrument or undertaking to which such person is a party or by which it or any of its property is bound.

“Credit and Collection Policy” means Purchaser’s credit, collection and administration policies and procedures relating to the Lease Contracts.

“Customer” means an individual who deals at arm’s length with the Seller for the purpose of leasing Equipment installed in the residence of such individual.

“Defaulted Lease” means a Lease Contract in respect of which any three (3) or more Assigned Payments are in arrears or which, for any other reason, has been identified by Seller or the Purchaser as uncollectible.

“Discount Rate” means, with respect to a Purchase Transaction, the rate (based on monthly rather than semi-annual compounding of interest) of 7.95% per annum. Notwithstanding anything to the contrary herein contained, the Purchaser may, in its sole discretion, acting reasonably, and upon 15 days prior written notice to the Seller, increase or decrease the Discount Rate based on then prevailing market conditions but only in accordance with movements in the Canadian Bond market for like term bonds and only to the same number of Bps.

“Dollars” or “\$” means lawful money of Canada.

“Enbridge” means Enbridge Gas Distribution Inc.

“Enbridge Agreements” means, collectively, the Open Bill Agreement and the Amended and Restated Proceeds Transfer, Servicing and Trust Agreement between Enbridge, various Billers and BNY Trust Company of Canada effective from time to time, as each may be amended, modified, supplemented or replaced from time to time.

“End of Term Payments” means any Assigned Payments under a Lease Contract payable by a Customer after 120 months of the first payment date under such Lease Contract.

“Equipment” means water heaters and heating, ventilation and air conditioning, water treatment systems light emitting diode equipment of a type and manufacture satisfactory to Purchaser, and such other consumer equipment as may be agreed upon from time to time by Purchaser and the Seller for the purpose of the Purchase Transactions contemplated by this Agreement.

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“Equipment Servicing” means, with respect to the Equipment subject to any Lease Contract, arranging service from qualified third party contractors required to repair or service such Equipment to good working order during the initial term of such Lease Contract.

“GAAP” means those accounting principles which are recognized as being generally accepted in Canada from time to time as set out in the handbook published by the Canadian Institute of Chartered Accountants.

“General Security Agreement” means a general security agreement granting to Purchaser a security interest in and to all of the assets and undertaking of the Seller which security interest will provide Purchaser with a first priority security interest over all Collateral and a security interest in all other assets of the Seller. Purchaser undertakes to reasonably consider requests from the Seller to subordinate Purchaser’s security interest under the General Security Agreement to a lead lender of the Seller.

“in writing” or “written” means any form of written communication or a communication by means of facsimile or telex device.

“including” means “including without limitation”, and “includes” shall mean “includes without limitation”.

“Invoice” shall mean an invoice entered into between the Seller and Purchaser, substantially in the form of Exhibit A hereto, with respect to the Purchase Transaction more particularly described or referred to therein.

“Lease Contract” means a contract, in form and substance satisfactory to Purchaser, entered into between the Seller and a Customer, pursuant to which the Seller has leased Equipment to such Customer for an original term of not more than 180 months from the first payment thereunder, with monthly lease payments during such term.

“Lien” means any mortgage, charge, pledge, hypothecation, lien (statutory or otherwise), security interest or other encumbrance of any nature however arising, or any other security agreement or arrangement creating in favour of any creditor a right in respect of any particular property that is prior to the right of any other creditor in respect of such property.

“Loss Ratio” means, for any quarter, the ratio (expressed as a percentage and computed as of the last day of such quarter) of (a) the amount obtained by multiplying by 4 the amount equal to the Net Outstanding Balance of all Lease Contracts which became Defaulted Leases during such quarter; to (b) the Net Outstanding Balance as of the end of such quarter.

“Material Adverse Effect” means a material adverse effect on the business, property, condition (financial or otherwise) or prospects of the Seller or a material adverse effect on the ability of any of the Seller to perform its obligations under this Agreement.

“Net Outstanding Balance” means, at any particular time with respect to any Lease Contract, the present value of the remaining Assigned Payments (excluding the Annual Increases and End of Term Payments) under such Lease Contracts payable within 120 months of



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the first payment date under each such Lease Contract at such time, calculated at the Discount Rate applicable to the Purchase Transaction pursuant to which the Assigned Payments under such Lease Contract were purchased by Purchaser.

“New Open Bill Agreement” means the Open Bill Access Billing and Collection Services Agreement to be entered into between the Seller and Enbridge, as the same may be amended, supplemented, modified or replaced from time to time.

“Notice of Security Interest” means a notice of security interest registered on title to real property in the proper land registry office.

“Open Bill Agreement” means the Open Bill Access Billing and Collection Services Agreement between the Purchaser and Enbridge Gas Distribution Inc. dated as of January 6, 2014, as the same may be amended, supplemented, modified or replaced from time to time.

“Original Program Agreement” has the meaning ascribed in the first recital.

“Permitted Liens” means, at any time, the following:

- (i) Liens in favour of Purchaser; and
- (ii) such other Liens (if any) as may be permitted in writing by Purchaser.

“person” is to be broadly interpreted and shall include an individual, a corporation, a partnership, a trust, an unincorporated organization, a joint venture, the government of a country or any political subdivision thereof, or an agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity.

“Potential Termination Event” means any event, act or condition which, if not remedied with the giving of notice or lapse of time, or both, would constitute a Termination Event.

“Principal” means John Nassar.

“Proceeds” means, with respect to any property or asset, including any Purchased Assets or any Collateral, all property in any form, derived directly or indirectly from any dealing with such property or asset or the Proceeds therefrom, and includes any payment representing indemnity or compensation for loss or theft of, or damage or destruction to, such property or asset or Proceeds thereof, including insurance proceeds.

“Proceeds of Realization” means, with respect to any Lease Contract, the net cash and non-cash proceeds of any sale, disposition or other realization of the Equipment applicable to such Lease Contract, and includes any insurance or similar recoveries with respect to the related Equipment that are to be or have been, as the context may require, applied in reduction of the liability of the applicable Customer under such Lease Contract.

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“property” includes any asset, property, revenue or undertaking, whether tangible or intangible, and whether or not shown on a balance sheet in accordance with GAAP.

“Purchased Assets” has the meaning ascribed thereto in Section 2.01.

“Purchase Period” means and constitute that period commencing on August 14, 2015 as more particularly set out in paragraph 2.01(5) hereunder.

“Purchase Transaction” means a purchase of Purchased Assets by Purchaser from the Seller pursuant to this Agreement and the relevant Invoice.

“Related Assets” means, in respect of any Assigned Payments, the following:

- (i) the Lease Contract, including all rights, powers, remedies and other benefits of the Seller thereunder;
- (ii) all rights in or to payments under all present and future insurance policies maintained by any Customer or by the Seller in respect of any of such Lease Contracts;
- (iii) the related Equipment;
- (iv) all present and future guarantees, indemnities, warranties and other agreements or arrangements of whatsoever character from time to time supporting or securing payment or performance of the related Customer’s obligations thereunder, whether pursuant to such Lease Contract or otherwise, including any residual value guarantees and any agreements under which any third party is obligated to assist in any repossession and/or sale of repossessed collateral, or to purchase repossessed collateral and other repurchase and/or remarketing arrangements and any security therefor, but only insofar as they relate to such Customer’s obligations under such Lease Contract;
- (v) all present and future payments made on account of any loss of or damage to the related Equipment, excess wear and tear thereon or excess use thereof, whether under such Lease Contract or otherwise;
- (vi) all claims, demands, actions, damages and indemnities owing to the Seller with respect to any present or future patent and copyright indemnity agreements or manufacturers’ or suppliers’ warranties relating to any such Equipment, except to the extent that the same indemnify against liability to others;
- (vii) any Lien on any assets mortgaged, charged, assigned or otherwise encumbered under or in connection with such Lease Contract; and
- (viii) all Proceeds of, from or with respect to any or all of the foregoing.

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“Related Documents” means any agreement, document, exhibit, notice or other written communication which has, at any time, been delivered by the Seller to Purchaser pursuant hereto, including the General Security Agreement and Invoices.

“Repurchase Event” has the meaning in Section 2.06.

“Required Reserve Amount” means, at any time, an amount equal to 5% of the Net Outstanding Balance at such time.

“Security” means the documents described in Section 3.01(k)(iii) and any other document pursuant to which the Seller grants to Purchaser security over its assets.

“Settlement Amount” shall have the meaning ascribed thereto in the Enbridge Agreements.

“Termination Event” means any of the following events or circumstances:

- (i) the Seller fails to pay any fee or other amount when due and payable hereunder and such failure continues for three Business Days or more;
- (ii) the Seller fails to make any payment or deposit to be made by it hereunder within two Business Days of the date when due;
- (iii) the Seller defaults in the performance or observance of any term or covenant contained in paragraph 5.01(d), or if it defaults in the performance or observance of any other term or covenant contained in this Agreement (other than as set out in subsections (i) and (ii) above) or any other agreement with Purchaser and such default continues for 30 days or more after the earlier of the date on which it first has actual knowledge of such default and the date on which written notice of such default is given to it by Purchaser;
- (iv) any Affiliate of the Seller defaults in the performance or observance of any term or covenant of any agreement with Purchaser which is not cured within any grace period applicable to any such breach;
- (v) any representation or warranty by the Seller contained in this Agreement or in any certificate delivered hereunder by it shall be untrue in any material respect on the date as of which it was made and such Termination Event has not been cured within 30 days after written notice to do so has been given by the Purchaser to the Seller;
- (vi) the Loss Ratio is greater than 1.50%;
- (vii) the Seller is in default under the Open Bill Agreement or any other agreement with Enbridge referred to therein or relating thereto and such default is not cured within the time period specified therein;

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- (viii) the Seller defaults on the payment of any principal of or any interest on any indebtedness equal to or greater than \$50,000 (after the passage of all applicable grace periods), or breaches any term of such indebtedness or of any loan agreement, mortgage, indenture or other agreement relating thereto pursuant to which the Seller has indebtedness equal to or greater than \$50,000 (after the passage of all applicable grace periods) if there is an acceleration under the applicable instrument and a demand for payment of the accelerated amount;
- (ix) the Seller is or it will become unlawful for it to perform or comply with any or all of its obligations under this Agreement, or if any of its obligations under this Agreement shall cease to be its legal, valid, binding and enforceable obligation, or if the enforceability of any such obligation is disputed by it;
- (x) if a change of control of the Seller occurs without the prior consent of Purchaser, which consent will not be unreasonably held;
- (xi) if the Seller suffers an event that would have a Material Adverse Effect on the financial condition of the Seller as determined by Purchaser;
- (xii) the Seller commits an act of bankruptcy under the *Bankruptcy and Insolvency Act* (Canada) or institutes proceedings for its winding up, liquidation or dissolution, or takes action to become a voluntary bankrupt, or consents to the filing of a bankruptcy proceeding against it, or files a petition or other proceeding seeking reorganization, readjustment, arrangement, composition or similar relief under any bankruptcy law or insolvency law or consents to the filing of any such petition or other proceeding, or consents to the appointment of a receiver, liquidator, trustee or assignee in bankruptcy or insolvency of the whole or any material part of its property, or makes an assignment for the benefit of creditors, or publicly announces or admits in writing its inability to pay its debts generally as they become due, or suspends or threatens to suspend transaction of all or any substantial part of its usual business, or any action is taken by it or any of its shareholders in furtherance of any of the foregoing; or
- (xiii) proceedings are instituted in any court of competent jurisdiction by anyone other than the Seller or a shareholder of the Seller for the winding up, liquidation or dissolution of such person, or for any reorganization, readjustment, arrangement, composition or similar relief with respect to the Seller under any bankruptcy law or any other applicable insolvency law, or for the appointment of a receiver, liquidator, trustee or assignee in bankruptcy or insolvency of the whole or any material part of the property of the Seller, and at any time thereafter such proceeding is not Contested by the Seller, or if any order sought in any such proceeding is granted and

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at any time thereafter such order is not either dismissed or Contested by the Seller and the effect thereof stayed.

“Total Purchase Price” means, with respect to any Purchase Transaction, an amount calculated by discounting the sum of the remaining Assigned Payments (excluding the Annual Increases) under all Lease Contracts subject to such Purchase Transaction payable within 60 to 120 months of the first payment date under each such Lease Contract at the applicable Discount Rate. For greater certainty, the Total Purchase Price does not include any Annual Increases or End of Term Payments.

1.02 **Headings and References.** The division of this Agreement into Articles, Sections, Subsections, paragraphs and clauses, the insertion of headings and the provision of any table of contents are for convenience of reference only and shall not affect the construction or interpretation hereof. The Article, Section and other headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer. All uses of the words “this Agreement”, “hereof”, “herein”, “hereto”, “hereunder” and “hereby” and similar expressions refer to this Consumer Lease Program Agreement as a whole and not to any particular provision of it. References to an Article, Section, Subsection, paragraph, clause or Exhibit refer to the applicable Article, Section, Subsection, paragraph, clause or Exhibit of this Agreement.

1.03 **Time.** All time references herein shall, unless otherwise specified, be references to local time in Toronto, Canada.

1.04 **Number and Gender.** Unless the context requires otherwise, words importing the singular shall include the plural and vice versa, and words importing gender shall include all genders.

1.05 **Entire Agreement.** This Agreement constitutes the entire agreement among the parties relating to the subject matter hereof and supersedes, and replaces any and all prior agreements, negotiations, discussions and understandings, written or oral, between Purchaser and the Seller, including without limitation the Original Program Agreement.

1.06 **Statute References.** Any reference in this Agreement to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.

1.07 **Severability.** If at any time any one or more of the provisions of this Agreement is or becomes invalid, illegal or unenforceable in any respect, such provision shall be deemed to be severed from this Agreement to the extent of such invalidity, illegality or unenforceability, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not be in any way affected or impaired thereby.

1.08 **Governing Law.** This Agreement and all certificates and other documents delivered to Purchaser hereunder shall be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

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1.09 **Exhibits.** The Exhibits attached hereto shall constitute and form a part of this Agreement.

## 2 **PURCHASE AND SALE OF LEASE CONTRACTS AND RELATED EQUIPMENT**

### 2.01 **Purchase and Sale Transactions**

(1) During the Purchase Period, the Seller will sell to Purchaser and Purchaser will purchase from the Seller Assigned Payments under certain Lease Contracts and the Related Assets (collectively, the “**Purchased Assets**”) for a price equal in each case to the Total Purchase Price calculated with respect thereto, plus any additional consideration specified herein. Each request for a Purchase Transaction shall be made by the Seller to Purchaser not less than five (5) Business Days prior to the date on which such Purchase Transaction is to occur. Requests for Purchase Transactions cannot be made more frequently than five times per week. No Purchase Transaction shall be completed unless and until all conditions specified in Sections 3.01 and 3.02 shall have been satisfied. Notwithstanding the foregoing, Purchaser may immediately terminate the Purchase Period by written notice to the Seller during the continuance of a Termination Event unless waived by the Purchaser in its sole discretion.

(2) In connection with each Purchase Transaction, the Seller shall submit to Purchaser the Lease Contracts to be purchased by Purchaser, together with such information relating to the applicable Customers and the related Equipment as Purchaser may reasonably request with respect to such Lease Contracts. All such Lease Contracts and applicable Customers shall conform to Purchaser’s Credit and Collection Policies. Any Lease Contract which includes Equipment with an installed purchase price greater than \$15,000 requires the pre-approval of the Purchaser to be included in any Purchase Transaction.

(3) On the date of each Purchase Transaction and subject to the terms and conditions of this Agreement and the related Invoice, Seller shall transfer to the Purchaser, without recourse (except as provided herein), and the Purchaser shall purchase from the Seller, all of the Seller’s right, title and interest in and to all Assigned Payments with respect to the Lease Contracts described or otherwise identified in such Invoice and all Related Assets with respect thereto. In consideration of the transfer of the Purchased Assets on the date of each Purchase Transaction, the Purchaser shall pay to the Seller and satisfy the Total Purchase Price for such Purchase Transaction as follows:

- (i) by crediting to the Cash Reserve Account the Applicable Cash Reserve Amount specified in the related Invoice; and
- (ii) by paying to the Seller, an aggregate amount equal to the aggregate Total Purchase Price of all Lease Contracts subject to such Purchase Transaction, minus the amount, if any, credited to the Cash Reserve Account pursuant to clause (i) of this Section 2.01(3), and minus any other amount then due and payable by the Seller under or in connection with this Agreement;

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and the Seller shall be entitled to any additional consideration specified herein. The Total Purchase Price will be allocated to the Lease Contracts and the Related Assets as the Purchaser may determine in its sole discretion provided that with respect to any Equipment purchased hereunder, the Purchaser shall allocate the Total Purchase Price based on the fair market value of such Equipment.

(4) The parties hereto intend that each Invoice constitutes an absolute transfer of all Purchased Assets specified in such Invoice and is not intended, and should not be construed, as a loan or an assignment by way of security. The Purchase Transactions made pursuant to this Agreement do not constitute and are not intended to result in the creation or assumption by the Purchaser of any obligation of the Seller or any other Person in connection with any of the Purchased Assets, including any obligations to any Customers.

(5) The period for the purchase and sale of Purchased Assets as set out in Section 2.01, provided no Termination Event has occurred, continues until August 31, 2018. Notwithstanding the foregoing, the Purchaser shall be entitled to terminate this Agreement at any time upon thirty (30) days prior written notice to the Seller.

(6) Nothing in these terms shall preclude the Seller from self-financing any lease contract from internal cash flow.

## 2.02 Cash Reserves.

(a) At the time of each Purchase Transaction under this Agreement, an amount equal to the Applicable Cash Reserve Amount for such Purchase Transaction shall be deposited with Purchaser by way of cash for deposit to the Cash Reserve Account. If at any time the amount of funds in the Cash Reserve Account falls below 5.0% of the Net Outstanding Balance for all Lease Contracts which are assigned to the Purchaser hereunder, the Seller will remit to Purchaser for deposit to the Cash Reserve Account cash until such time as the Cash Reserve Account has been restored to the Required Reserve Amount.

(b) Purchaser and the Seller shall review the Cash Reserve Account on a monthly basis. If on the last day of any month the sum of the credit balance in the Cash Reserve Account exceeds the Required Reserve Amount, and provided no Termination Event or Potential Termination Event has then occurred, the Purchaser shall release to the Seller an amount equal to the lesser of such excess and the credit balance, if any, in the Cash Reserve Account.

(c) The Purchaser shall credit to the Cash Reserve Account the amount of any payments received on account of Annual Increases and End of Term Payments in excess of the Net Outstanding Balance under the Lease Contracts as and when received.

(d) The parties acknowledge and agree that any payments made to the Seller on account of amounts credited to the Cash Reserve Account shall be deemed to be additional consideration at such time. If at any time any payments are made to the Seller on account of amounts credited to the Cash Reserve Account, such amounts shall be allocated as between payments in respect of the Total Purchase Price and additional consideration payable to the

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Seller, as determined by the Seller, acting reasonably, based on its determination of the source of the available amounts.

**2.03 Limited Recourse.** Except for the indemnity as set out in Section 5.01(j), it is specifically acknowledged and agreed that Purchaser may, with respect to any Purchase Transaction, only have recourse against the Purchased Assets and the Collateral. In the event that the Seller is required to indemnify Purchaser pursuant to Section 5.01(j), there shall be no limitation to the recourse of Purchaser to the assets of the Seller.

**2.04 Default by Customers.**

(a) At any time after a Lease Contract becomes a Defaulted Lease, Purchaser shall, from time to time, debit the Cash Reserve Account in an aggregate amount equal to the Net Outstanding Balance for such Lease Contract. Upon receipt by Purchaser of any Proceeds of Realization in respect of any Defaulted Lease (excluding any amounts received in respect of sales taxes), Purchaser shall apply such Proceeds of Realization, firstly, to Purchaser, to the extent that any Net Outstanding Balance of such Lease Contract had not been satisfied out of the aggregate amount debited from the Cash Reserve Account and, secondly, by crediting the Cash Reserve Account by an amount equal to the balance of such Proceeds of Realization; and

(b) The Seller shall use all reasonable commercial efforts to enforce the rights of the lessor under the Lease Contract in default and to recover the maximum amount on account of the amounts owing under such Lease Contract.

**2.05 Taxes.** Purchaser shall promptly pay and discharge when due all Canadian federal and provincial goods and services taxes and sales taxes, and any penalties or interest related thereto, in relation to its purchases of Lease Contracts pursuant to this Agreement, and Purchaser agrees to indemnify and save the Seller harmless from and against any such taxes, penalties or interest charged to or imposed upon the Seller.

**2.06 Deemed Repurchase.** If the Purchaser determines that (a) any Lease Contract specified in an Invoice did not meet the requirements of Section 4.01(i) on the date of the related Purchase Transaction, or (b) a Lien (other than a Permitted Lien) has been validly asserted against a Lease Contract or any Related Assets with respect thereto or any Collateral with respect thereto (a "Repurchase Event") then (A) the Purchaser shall notify the Seller in writing and in reasonable detail, of the occurrence of such Repurchase Event by no later than the fifth Business Day after the end of the month in which such Repurchase Event shall have occurred and (B) the Seller shall promptly, and in any event within two Business Days of the receipt of such notice by the Purchaser, pay to the Purchaser an amount equal to the Net Outstanding Balance for such Lease Contract and, upon payment to the Purchaser of all amounts required to be paid to the Purchaser under this Section 2.06 with respect to any Lease Contract, such Lease Contract and the Related Assets with respect thereto shall be deemed resold to the Seller.

**2.07 End of Contract Term.** Upon payment in full of all Assigned Payments in respect of any Lease Contract and all other amounts which are then payable to the Purchaser pursuant to this Agreement in respect thereof, then the Purchaser will sell to the Seller all of its right, title and interest in and to the Equipment and Related Assets with respect to such Lease Contract, for



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a nominal sum of \$10.00. Upon receipt of such amount, the Purchaser shall be deemed to transfer, sell, convey, assign and deliver all of its right, title and interest in and to the Equipment and Related Assets to the Seller as at the date on which the last Assigned Payment with respect to such Lease Contract was made by the Customer. The sale of such right, title and interest in and to the Equipment and Related Assets from the Purchaser to the Seller shall be on an “as is, where is” basis without representation or warranty other than that the Purchaser has the right to enter into such sale and that such assets are conveyed to the Seller free and clear of all Liens originating by or through the Purchaser.

**2.08 Optional Future Sale.** At any time, the Seller may request that the Purchaser sell all or a specified portion of the Purchased Assets to the Seller (the “Repurchased Assets”). The Purchaser may, in its sole discretion, agree to such request, but the Purchaser shall not be under any obligation to enter into a transaction to sell the Repurchased Assets to the Seller. If the Purchaser chooses to enter into such transaction, the parties hereto acknowledge and agree that the purchase price of the Repurchased Assets will be determined at that time in the sole discretion of the Purchaser, acting reasonably.

### 3 CONDITIONS PRECEDENT TO PURCHASE TRANSACTIONS

**3.01 Conditions Precedent to Initial Purchase Transaction.** The obligation of the Purchaser to complete the Purchase Transaction contemplated in the initial Invoice hereunder is subject to the Purchaser having received each of the following documents, in each case, in form and substance satisfactory to the Purchaser, or the Purchaser being satisfied of the fulfilment of any other condition precedent (provided that the Purchaser may, at its option, waive in writing the requirement, in whole or in part, for any such deliveries or fulfilment):

(a) Purchaser shall have received such financial and other information relating to the Seller as it shall have reasonably requested.

(b) The following documents in form, substance and execution acceptable to Purchaser shall have been delivered by the Seller to Purchaser:

- (i) a certified copy of the constating documents and by laws of the Seller, and of all corporate proceedings taken and required to be taken by the Seller to authorize the execution and delivery of this Agreement and the Invoice’s and the performance of the transactions by it contemplated therein;
- (ii) a certificate of incumbency for the Seller setting forth specimen signatures of the persons authorized to execute this Agreement and the Invoices;
- (iii) an originally executed copy of this Agreement;
- (iv) an originally executed copy of a general security agreement granting to Purchaser a security interest in and to all of the assets and undertaking of the Seller which security interest will provide Purchaser with a first priority security interest over all Lease Contracts encompassing Assigned Payments purchased by Purchaser under any Purchase Transaction, to the

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extent not assigned, all related Collateral, the Cash Reserve Amount and any other assets related to the foregoing and a subordinate interest in all other assets;

- (v) reports showing the results of searches conducted in each jurisdiction reasonably identified by the Purchaser, against (x) the Seller, and (y) its predecessors to determine the existence of any Liens in the Purchased Assets and the Collateral, together with evidence of the discharge and release of all Liens of any person in any of the Purchased Assets and the Collateral and copies of any estoppel or no-interest letters which the Purchaser shall have reasonably requested to confirm that any registration or filing against the Seller made in favour of any Person that could be relied upon to perfect or protect a Lien in any such property does not and will not be relied upon for such purpose; and
- (vi) such other documents relative to this Agreement and the transactions contemplated herein as Purchaser may reasonably require.

**3.02 Conditions Precedent to All Purchase Transactions.** The obligation of the Purchaser to complete the Purchase Transactions contemplated in each Invoice hereunder (including the initial Invoice) is subject to fulfilment of each of the following conditions precedent (each of which may, in writing, be waived in whole or in part by the Purchaser at its option):

(a) There shall exist no Termination Event or Potential Termination Event relative to the Seller, and the Seller shall have delivered to Purchaser, if so requested by Purchaser, a certificate of a senior officer of the Seller to such effect.

(b) The representations and warranties of the Seller contained in Section 4.01 shall be true on and as of the date of such Purchase Transaction with the same effect as if such representations and warranties had been made on an as of such date, and the Seller shall have delivered to Purchaser, if so requested by Purchaser, a certificate of a senior officer of the Seller to such effect.

(c) The balance recorded in the Cash Reserve Account immediately prior to the date of such Purchase Transaction shall be equal to or greater than 3.0% of the Net Outstanding Balance for all Lease Contracts which are assigned to the Purchaser hereunder at such time;

(d) Each applicable Lease Contract shall be billed under the Open Bill Agreement or on a pre-authorized payment basis in favour of Purchaser.

(e) Each applicable Lease Contract shall have been duly executed and delivered by each of the Seller and the Customer thereunder, and neither the Seller nor such Customer shall be in default thereunder.

(f) The applicable Equipment shall have been fully paid for by the Seller. Such Equipment shall also be in good working order and shall be subject to no Lien other than

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Permitted Liens, and the Seller shall have provided evidence of payment in full for such Equipment if so requested.

(g) The Seller shall have delivered to Purchaser an original executed copy of each applicable Lease Contract, delivery and acceptance certificate and a geowarehouse search confirming the homeowner's name related thereto and an electronic file relative to each applicable Lease Contract and the related Equipment in substance satisfactory to Purchaser.

(h) The Seller shall have duly executed and delivered an Invoice relative to each applicable Lease Contract.

(i) The Seller shall have provided evidence of all filings or registrations necessary to protect the lessor's interests under each applicable Lease Contract.

(j) There shall not have elapsed more than one year from the date of any applicable Lease Contract, unless otherwise consented to by Purchaser.

#### 4 REPRESENTATIONS AND WARRANTIES

4.01 **Representations and Warranties by the Seller.** To induce Purchaser to purchase the Purchased Assets hereunder, the Seller represents and warrants to Purchaser that:

(a) Corporate Status and Power. The Seller is a corporation duly incorporated and organized and validly existing under the laws of its jurisdiction of incorporation, and has full corporate power and authority to own its property, to carry on the business carried on by it (which is and will continue to be only the business contemplated by this Agreement), and to enter into and perform this Agreement, any Related Documents and any Lease Contract.

(b) Qualification and Compliance with Law. The Seller is duly qualified and has full legal right to own its property and to carry on the business carried on by it, and is in compliance with all Applicable Law.

(c) Remittance of Taxes. The Seller is not in arrears with respect to required filings and remittances with any taxing authority in any jurisdiction where the Seller carries on business.

(d) Authorization; Consents; Enforceable Obligations. The Seller has taken all corporate action necessary to be taken by it to authorize the execution, delivery and performance of this Agreement, any Related Documents and any Lease Contract. Except as has been obtained and is in full force and effect, no consent, waiver or authorization of, or filing with or notice to, any person (including any creditors or shareholders of the Seller) is required to be obtained in connection with the execution, delivery or performance by the Seller of this Agreement, any Related Documents or any Lease Contract. This Agreement has been, and any Related Documents and any Lease Contract will be, duly executed and delivered by the Seller, and constitutes, or will constitute on delivery in the case of any Related Documents and any Lease Contract, a legal, valid and binding agreement of the Seller enforceable against the Seller in accordance with its terms.

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(e) No Conflicts. The execution, delivery and performance by the Seller of this Agreement, any Related Documents and any Lease Contract will not conflict with or result in a breach of any Applicable Law, and will not conflict with, or result in a breach of, or constitute a default under, any of the provisions of the articles of incorporation, other constating documents or by laws of the Seller or any agreement, permit or other Contractual Obligation to which the Seller or any of its Affiliates is a party or by which it is bound.

(f) Litigation, etc. Except as previously disclosed in writing by the Seller to Purchaser, there is no action, suit or proceeding (whether or not purportedly on behalf of the Seller) pending or, to the knowledge of the Seller, threatened, against or affecting the Seller before any court or before or by any governmental department, commission or agency, in Canada or elsewhere, or before any arbitrator or board, and the Seller is not in default with respect to any order or award of any arbitrator or government department, commission or agency or otherwise seeking damages or payment of monies which exceed the sum of \$50,000.00.

(g) Termination Events. No Termination Event or Potential Termination Event relative to the Seller has occurred or is continuing.

(h) Title to and Sufficiency of Property. The Seller is the legal and beneficial owner of all Lease Contracts included in any Purchase Transaction hereunder and the related Equipment, in each case free of all Liens other than Permitted Liens.

(i) Conditions under Lease Contracts. As at the date of each Purchase Transaction, all covenants and obligations of any kind whatsoever to be performed or fulfilled by the Seller as lessor under each Lease Contract to be included in such Purchase Transaction, including without limitation all conditions precedent to the obligation of the Customer thereunder to pay all amounts expressed to be payable thereunder when due, have been duly performed or fulfilled.

(j) Lease Contracts. In respect of each Lease Contract to be included in each Purchase Transaction:

- (i) each Lease Contract is in the form of Exhibit "B" hereto, the Seller has not given any consents, approvals or waivers, or agreed to any amendments, or made any representations, warranties or commitments to the Customer thereunder, which would in any way impair the rights of the Seller (or of Purchaser as purchaser) to receive all amounts expressed to be payable thereunder when due;
- (ii) there has been no payment of any amount under such Lease Contract prior to the time that it is specified therein to be payable;
- (iii) such Lease Contract is not a Defaulted Lease;
- (iv) the related Equipment is accurately described therein, is in good operating condition and has been delivered, properly installed by a qualified installer, and accepted without conditions or objection by the Customer thereunder;

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- (v) the Customer thereunder has no valid basis for contestation of the right of the Seller (or of Purchaser as purchaser) to receive all amounts expressed to be payable thereunder when due (in each case without setoff or abatement whatsoever) and no right of rescission, cancellation, set-off, counter-claim or defence has been asserted or threatened with respect to such Lease Contract;
- (vi) the terms of each Lease Contract, the origination thereof and the execution and delivery thereof by each of the parties thereto do not contravene any Applicable Laws (including any applicable consumer protection legislation);
- (vii) such Lease Contract has been duly executed and delivered by the Customer thereunder, is bona fide, and is a valid and legally binding obligation of such Customer and the Seller enforceable in accordance with its terms;
- (viii) the Seller is expressly permitted to assign the Purchased Assets and to grant a security interest in the Collateral, in whole or in part, without notice to or the consent of the applicable Customer thereof or any other person or any other restriction, in order for the Purchaser to enforce such assignment against such Customer;
- (ix) no person other than the Seller has any right, title or interest in or to such Lease Contract or the related Equipment (except the Customer as lessee under such Lease Contract);
- (x) all registrations, recordings and filings (including without limitation the filing of any financing statement pursuant to the *Personal Property Security Act* (Ontario)) have been made as are necessary or of advantage to perfect and protect the interest of the Seller with respect to such Lease Contract and the related Equipment. At its own cost, the Seller shall file a Notice of Security Interest for each Lease Contract with a Purchase Price of at least \$15,000;
- (xi) all taxes and other governmental fees and charges then due and payable against, on or in respect of such Purchased Assets or such Collateral are paid in full up to the date of such Purchase Transaction;
- (xii) the Customer thereunder has been informed in writing of the appropriate procedure to obtain Equipment Servicing;
- (xiii) all information delivered by the Seller to Purchaser with respect to such Lease Contract and the related Equipment is accurate;

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- (xiv) all Equipment has a non-removable, heat resistant sticker affixed to the Equipment with a 1-800 customer service telephone number and identifying the Equipment as the property of the Seller; and
- (xv) the Customer has insured the Equipment in accordance with the provisions of the Lease Contract.

**4.02 Representations and Warranties by Purchaser.** To induce the Seller to sell the Purchased Assets hereunder, Purchaser represents and warrants to the Seller that:

(a) Corporate Status and Power. Purchaser is a corporation duly incorporated and organized and validly existing under the laws of its jurisdiction of incorporation, and has full corporate power and authority to own its property, to carry on the business carried on by it (which is and will continue to be only the business contemplated by this Agreement), and to enter into and perform this Agreement.

(b) Qualification and Compliance with Law. Purchaser is duly qualified and has full legal right to own its property and to carry on the business carried on by it, and is in compliance with all Applicable Law.

(c) Authorization; Consents; Enforceable Obligations. Purchaser has taken all corporate action necessary to be taken by it to authorize the execution, delivery and performance of this Agreement. Except as has been obtained and is in full force and effect, no consent, waiver or authorization of, or filing with or notice to, any person (including any creditors or shareholders of Purchaser) is required to be obtained in connection with the execution, delivery or performance by Purchaser of this Agreement. This Agreement has been duly executed and delivered by Purchaser, and constitutes a legal, valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms.

(d) No Conflicts. The execution, delivery and performance by Purchaser of this Agreement will not conflict with or result in a breach of any Applicable Law, and will not conflict with, or result in a breach of, or constitute a default under, any of the provisions of the articles of incorporation, other constating documents or by laws of Purchaser or any agreement, permit or other Contractual Obligation to which Purchaser is a party or by which it is bound.

**4.03 Survival.** All representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement and the purchase and sale of the Purchased Assets from time to time, and the completion of each Purchase Transaction shall constitute a reaffirmation on and as of the date thereof, by reference to the then existing facts and circumstances, of all representations and warranties of the Seller contained in this Agreement.

## 5 COVENANTS

**5.01 Covenants by the Seller.** So long as Purchaser is obliged to purchase any Purchased Assets hereunder, the Seller covenants and agrees that it shall:

- (a) Information. Furnish to Purchaser:

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- (i) not later than 90 days after the end of each financial year of the Seller, a copy of the review engagement financial statements of the Seller as at the end of such financial year prepared by an external CPA firm, which financial statements shall include the Seller's balance sheet and the related statements of income, retained earnings, changes in financial position of the Seller and notes to same;
  - (ii) not later than 45 days after the end of each financial quarter (including the last quarter) of each financial year of the Seller, a copy of the unaudited balance sheet of the Seller as at the end of such quarter and the related unaudited statements of income, retained earnings and changes in financial position of the Seller for such quarter and the portion of the financial year through the end of such quarter, setting forth in each case in comparative form the figures for the previous financial year of the Seller, along with a certificate of the chief financial officer of the Seller stating that in his opinion such financial statements present fairly the financial position of the Seller at the date of such statements and for the financial quarter included in such statements;
  - (iii) concurrently with the delivery of the financial statements referred to in clauses (i) and (ii) above, a certificate of the Secretary of the Seller stating that, to the best of such officer's knowledge, the Seller during such period has observed or performed all of its covenants and other agreements contained in this Agreement to be observed or performed by it, and that such officer has obtained no knowledge of any Termination Event or Potential Termination Event except as specified in such certificate; and
  - (iv) promptly, such additional financial and other information relating to the Seller as Purchaser may from time to time reasonably request.
- (b) Notices. Give notice of each of the following events to Purchaser promptly upon becoming aware of any such event:
- (i) any Termination Event or Potential Termination Event on the part of the Seller; and
  - (ii) any event which has had, or which has a reasonable possibility of having, a Material Adverse Effect on the Seller.
- (c) Liens. Not create, incur, assume or suffer or permit to exist any Lien upon any Lease Contracts, Equipment or proceeds thereof, whether now owned or hereafter acquired, except for Permitted Liens.
- (d) Payments in Trust. The Seller shall comply with the billing and collection procedures set out in Section 6. If any monies are received otherwise than in compliance with Section 6, the Seller shall receive in trust and punctually pay over to Purchaser all amounts

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which may from time to time be received by the Seller on account of any Lease Contract that has been purchased by Purchaser hereunder.

(e) Notice of Litigation. The Seller shall notify Purchaser in the event any litigation for an amount equal to or greater than \$10,000 is commenced or threatened by the Customer under any Lease Contract against the Seller or Purchaser, forthwith upon the Seller obtaining knowledge thereof.

(f) Enbridge Account. The Seller agrees that it shall not, without the written consent of Purchaser, direct Enbridge to remit payments owing under the Open Bill Agreement to any bank account other than the account referred to in Section 6.02 of this Agreement.

(g) Location of Assets. The Seller shall provide Purchaser with at least 30 days prior written notice of its intention to move its business from the address provided for opposite its name on the signature page of this Agreement.

(h) Payment of Costs and Expenses. The Seller shall reimburse Purchaser on demand in writing, for all reasonable actual out-of-pocket expenses incurred by on or behalf of Purchaser including, without limitation, the reasonable fees and disbursements of counsel to Purchaser in connection with the enforcement of the rights of Purchaser under this Agreement or any other documentation ancillary to the completion of the transactions contemplated hereby; for greater certainty, Purchaser agrees that fees and disbursements of counsel incurred with the preparation of this Agreement shall be for the account of Purchaser.

(i) Service Response Times. In addition, the Seller shall ensure that the following service response times for services provided Monday to Sunday inclusively, be followed in connection with servicing of Equipment: (i) calls received by 4:00 p.m. relation to no hot water or water leaking from Equipment shall be responded to within 8 hours of receipt, with calls received after 4:00 p.m. being responded to before 4:00 p.m. of the next day; and (ii) call backs and all other calls shall be responded to within 24 hours of receipt.

(j) Indemnity. Without prejudice to any other rights of the Purchaser hereunder or under any Applicable Law, the Seller and its Principal hereby agrees to indemnify the Purchaser and its agents and their respective officers, directors and employees (each, an “**Indemnified Person**”) and to save them harmless from and against any and all damages, losses, claims, liabilities, costs and expenses (including reasonable legal fees and disbursements on a solicitor and own client basis) awarded against or incurred by any of them arising out of or as a result of:

- (i) any representation, warranty or statement made by the Seller (or any of its officers) in or in connection with this Agreement or any Related Document to which it is a party, which was incorrect when made or delivered and has not been cured within 30 days after written notice to do so has been given by the Purchaser to the Seller;
- (ii) the failure of the Seller to perform or observe any of its covenants, duties or obligations hereunder or under any of the Related Documents to which it is a party and such default continues for 30 days after the earlier of the



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date on which it first has actual knowledge of such default and the date on which written notice of such default is given to it by Purchaser;

- (iii) the failure by the Seller to comply with any Applicable Law with respect to any of the Purchased Assets and the Collateral, including any applicable consumer protection, bulk sales, competition, personal information protection or any other privacy legislation, or the non-conformity of any of the Purchased Assets and the Collateral with any Applicable Law which is not remedied within 30 days after the earlier of the date on which it first has actual knowledge of such default and the date on which written notice of such default is given to it by Purchaser;
- (iv) any products liability claim, personal injury or property damage suit or other similar or related claim or action of whatsoever sort arising out of or in connection with any Purchased Assets and the Collateral or any services provided in respect thereof, including any losses attributable to a Customer's failure to insure any Equipment forming part of the Purchased Assets or the Collateral;
- (v) any claims, disputes, damages, penalties and losses arising from any part of the Purchased Assets or the Collateral, other than (A) losses attributable to the gross negligence or wilful misconduct of the Purchaser or its officers, employees or agents, or (B) losses attributable to any Customer's failure to discharge its payment obligations under the related Lease Contract because of such Customer's bankruptcy or insolvency;
- (vi) any claims asserted against the Cash Reserve Account or any other Purchased Assets or Collateral by any of the creditors of the Seller;
- (vii) any taxes which may be imposed on any Indemnified Person in any manner, directly or indirectly, in connection with this Agreement, any Related Documents or the transactions contemplated hereunder or thereunder, other than Taxes which, on the date hereof, are imposed on or measured by the overall net income or capital of such Indemnified Person, and penalties or interest thereon;
- (viii) the Purchaser not having ownership of the Purchased Assets, or a first-ranking security interest in the Collateral, in each case, free and clear of any Lien, other than any Lien created by the Purchaser which is not remedied within 30 days after the earlier of the date on which it first has actual knowledge of such default and the date on which written notice of such default is given to it by Purchaser.

(k) Insurance. The Seller will obtain and maintain insurance of such types (including contingent liability insurance) against such risks as is prudent for a business of an established reputation, in such amounts and in a form and substance acceptable to Purchaser and with reputable insurers acceptable to Purchaser and (i) prior to the initial Purchase Transaction, the

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Seller will deliver to Purchaser a true and complete copy of such insurance policies and (ii) prior to the initial Purchase Transaction and, if requested by Purchaser, prior to each Purchase Transaction thereafter, the Seller will deliver to Purchaser a photocopy of a certificate of insurance in respect of each such insurance confirming the existence and good standing thereof in compliance herewith; without limiting the foregoing, each such insurance policy that is applicable to or relating to the Purchased Assets and the Collateral shall name Purchaser as a loss payee as its interest may appear and as an additional insured, shall provide that such policy may not be terminated, cancelled or reduced in any manner without 30 days' prior written notice to Purchaser and shall provide that no act, omission, concealment or misrepresentation by the Seller or any other named insured shall affect Purchaser's rights thereunder, in each case, in form and substance satisfactory to Purchaser.

(1) Certificate of Insurance. The Seller will, on or prior to each Purchase Transaction, deliver to Purchaser a photocopy of any certificate of insurance from the insurer or broker of any Customer that is required by the related Lease Contract to be delivered to the lessor thereunder.

## 5.02 Termination Event

Upon the occurrence of and during the continuance of a Termination Event, Purchaser may take any or all of the following actions: (i) refuse to enter into additional Purchase Transactions; (ii) realize upon any of the Security (including, without limitation, assuming the collection of all Assigned Payments under all Lease Contracts and the management and administration of all Lease Contracts and retain all amounts payable under such Lease Contracts until all amounts have been paid in full; (iii) terminate the right of the Seller to bill and collect payments as provided for in Section 6 below and send a notice to each Customer to make all further payments due under the Lease Contract to Purchaser or as it may otherwise direct and in doing so, utilize the power of attorney as set out in Section 7.08 below and (iv) exercise any other right or power or take any action, suit, remedy or proceeding authorized or permitted by this Agreement, any of the Security, by law, by equity or otherwise. The rights of the Purchaser under this Section 5.02 are cumulative and not exclusive.

## 6 ADMINISTRATION OF LEASE CONTRACTS

6.01 **Billing and Collection of Lease Contracts.** The Purchaser will administer the billing and collection of all Lease Contracts purchased by Purchaser hereunder. All amounts collected under the Open Bill Agreement or a pre-authorized payment plan ("**PAPP**") shall be paid to a designated bank account in the name of and controlled by Purchaser which is subject to a blocked account agreement with the applicable bank. Upon the entering into of the New Open Bill Agreement between the Seller and Enbridge, all amounts collected under the New Open Bill Agreement or a PAPP shall be paid to a designated bank account in the name of the Seller in trust for and subject to the control of the Purchaser which is subject to a blocked account agreement (the "**Blocked Account Agreement**") with the applicable bank (the "**Blocked Account**"). The Seller shall be responsible for the payment of all fees, expenses and costs payable which are related to this Agreement under the Open Bill Agreement, and shall be responsible for the payment of all fees, expenses and costs payable under the New Open Bill Agreement and all PAPP accounts. The Seller will grant the Purchaser electronic access and sole

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signing authority to the Blocked Account. At the end of each month, and provided no Termination Event or Potential Termination Event on the part of the Seller has occurred, the Purchaser will transfer any amounts in its account or in the Blocked Account in excess of what is required to be paid to the Purchaser hereunder to the Seller. The Seller shall be responsible for the payment of all fees, expenses and costs payable under the Open Bill Agreement and all PAPP accounts. The Seller agrees to use commercially reasonable efforts to enforce the rights of the lessor under each Lease Contract pursuant to which a customer default has occurred, including but not limited to removal of Equipment and other actions as required by Purchaser.

**6.02 Lease Contract Servicing and Administration.** The Seller will be responsible for servicing and administration of the Equipment for the term of the agreement. If a Termination Event has occurred, the Purchaser may designate a replacement servicer to succeed Seller with respect to the Purchased Assets and the Collateral and may do so on such terms as the Purchaser and such replacement servicer may agree to.

## 7 MISCELLANEOUS

### 7.01 Assignments and Transfers

(1) In addition to any transfer required by Applicable Law to be made to any person, Purchaser may assign or transfer all or part of its rights and obligations in respect of the Lease Contracts and the related Equipment to its funders (an “**Assignee**”) at such times and upon such terms as it may determine, without any obligation to obtain any consent of the Seller or to notify the Seller of the identity of the Assignee. The Seller shall promptly execute and deliver such assurances as may be reasonably requested by Purchaser to confirm the foregoing. The assignment by the Purchaser to an Assignee shall not increase the obligations or costs of the Seller hereunder, unless a Termination Event or Potential Termination Event has occurred, following the occurrence of which it is agreed that the Purchaser may make an assignment to an Assignee even if it results in increased obligations or costs of the Seller.

(2) Purchaser may disclose to a potential Assignee such information concerning the Seller as Purchaser may consider to be appropriate in connection therewith.

(3) The Seller shall not assign or transfer any part of its rights and obligations hereunder without the expressed written consent of Purchaser.

**7.02 Remedies Cumulative.** The rights and remedies of each of Purchaser and the Seller under this Agreement are cumulative and in addition to and not in substitution for any rights or remedies provided by law or by equity.

**7.03 Waiver.** No delay on the part of any party hereto in exercising any right or privilege hereunder shall operate as a waiver thereof, and no waiver of any Termination Event on the part of Purchaser or the Seller shall operate as a waiver thereof unless made in writing and signed by an authorized officer of the other of them. No written waiver shall preclude the exercise by waiving party of any right, power or privilege hereunder other than in respect of the specific action or inaction covered by such waiver and strictly in accordance with the terms of such waiver, or extend to or apply to any other Termination Event.

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7.04 **Further Assurances.** Each of the Seller and Purchaser shall from time to time forthwith upon request by the other of them, do, make and execute all such documents, acts, matters and things as may be reasonably required by the other of them to give effect to this Agreement and each Purchase Transaction.

7.05 **Notices.** Any notice or communication to be given hereunder may be effectively given by delivering the same at the addresses set out on the signature page hereof or by sending the same by facsimile, electronic communication or prepaid registered mail to the parties at such addresses. Any notice so mailed shall be deemed to have been received on the fifth Business Day next following the mailing thereof, provided that postal service is in normal operation during such time. Any facsimile or electronic communication shall be deemed to have been received on transmission if sent during normal business hours on a Business Day and, if not, on the next Business Day following transmission. Any party may from time to time notify the other parties, in accordance with the provisions hereof, of any change of its address which thereafter, until changed by like notice, shall be the address of such party for all purposes of this Agreement.

7.06 **Confidentiality.** Each party hereto will maintain on a confidential basis (except as otherwise permitted hereunder or as required by Applicable Law) all information relating to the other party provided to it hereunder by the other parties; provided, however, that this Section 7.06 shall not apply to any information which (i) was lawfully in the public domain at the time of communication to the first party, (ii) lawfully enters the public domain through no fault of the first party subsequent to the time of communication to the first party, (iii) was lawfully in possession of the first party free of any obligation of confidence at the time of communication to the first party, (iv) was lawfully communicated to the first party free of any obligation of confidence subsequent to the time of initial communication to the first party or (v) was lawfully communicated to any person free from any obligation of confidence subsequent to the time of communication to the first party.

7.07 **Employment.** Nothing contained in this Agreement shall be construed to constitute either or both of the Seller and Purchaser as partners or agents, and neither of them shall have any authority to bind the other in any respect, except as expressly stated herein.

7.08 **Attorney.** The Seller hereby grants to Purchaser an irrevocable power of attorney, with full power of substitution and expressly coupled with an interest in favour of Purchaser, to take in the place and stead of and in the name of the Seller or in Purchaser's own name from time to time at Purchaser's discretion, acting reasonably, such actions as the Seller may be obligated to take hereunder or as Purchaser may deem necessary or advisable to collect, endorse, negotiate or otherwise realize on any Purchased Assets or Collateral or any part thereof, any negotiable instrument, or other right of any kind, held or owned by the Seller and transferred or delivered to or received by Purchaser as payment on account or otherwise in respect of any of the Purchased Assets or Collateral, including:

(a) to evidence or protect Purchaser's interest in the Purchased Assets or Collateral and to execute and file, in the Seller's name and on the Seller's behalf, such recordings, registrations, financing or similar statements (including any amendments, renewals and

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continuation statements) under applicable laws, including in any personal property registry office as may be necessary or desirable to validate, perfect or protect Purchaser's interest in the Purchased Assets or Collateral;

(b) to ask, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for monies due and to become due in connection with the Purchased Assets or Collateral or otherwise owed to the Seller or Purchaser;

(c) to receive, endorse and collect any cheques, drafts or other instruments, documents and chattel paper in connection with monies due and to become due in connection with the Purchased Assets or Collateral or otherwise owed to the Seller or Purchaser;

(d) to file any claims or take any action or institute any proceedings that Purchaser may deem to be necessary or desirable for the collection of any of the Purchased Assets or Collateral or the realization on any Collateral (including the filing of any proofs of claim or similar instruments or the taking of any actions incidental thereto under any insurance policies of the Seller or of the related Customer in respect of any of the Lease Contracts); and

(e) to prepare, execute, deliver and/or register, in the Seller's name and on the Seller's behalf, such instruments and documents (including assignments) necessary or desirable in furtherance of the foregoing.

(f) The power of attorney and other rights and privileges granted by this Section shall survive any dissolution, liquidation or winding-up of the Seller.

**7.09 Communications with Customers.** Any communications with Customers from time to time with respect to the Lease Contracts and related Equipment purchased by Purchaser hereunder including, without limitation, payment defaults, account and payment enquiries and changes in names and addresses shall be in the discretion of Purchaser, subject to Section 6.02.

**7.10 Survival.** All agreements, representations and warranties made herein shall survive the execution and delivery of this Agreement and the sale and purchase of Lease Contracts and Equipment hereunder, and all indemnities set forth herein shall survive the termination of this Agreement.

**7.11 Counterparts.** This Agreement may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

**7.12 Benefit of Agreement.** This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

**[Signature Page to Follow]**

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement.

Address: 156 Duncan Mill Rd., Unit 16  
Toronto, Ontario  
M3B 3N2

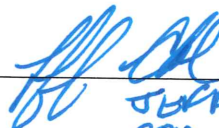
Attention: President

Facsimile: 1-877-689-3863

**Ecohome Financial Inc.**

by:

name:  
title:

  
JEFF CLARK  
COO

Address: 302 The East Mall, Suite 301  
Toronto, ON  
M9B 6B7


Attention: John Nassar

Facsimile:

**Utilecredit Corp.**

by:

name:  
title:

  
John Nassar  
President

**Exhibit "A"**  
**Form of Invoice**

Invoice [No.]

[Select Date]

Bill To

Ship To

[Name]

Same as recipient

[Street Address]

[City, ST ZIP Code]

1. This is an invoice relating to and within the meaning of the Amended and Restated Consumer Lease Program Agreement (the "**Program Agreement**") dated as of January 6, 2016 between Ecohome Financial Inc. as seller (the "**Seller**") and Utilecredit Corp., as purchaser (the "**Purchaser**") (together with all schedules and exhibits thereto and as it may be amended, supplemented, restated or otherwise modified from time to time, the "**Invoice**"). By their execution and delivery of this Invoice, all provisions of the Program Agreement are incorporated herein, except as specifically modified in this Invoice. Capitalized terms used and not defined in this Invoice have the meanings set forth in the Program Agreement.
2. Meaning of Certain Defined Terms for this Invoice:
  - A) Discount Rate: \_\_\_\_\_% per annum
  - B) Total Purchase Price: \$\_\_\_\_\_
  - C) Cash Purchase Price: \$\_\_\_\_\_
  - D) Applicable Cash Reserve Amount: \$\_\_\_\_\_
  - E) Date of Purchase Transaction \_\_\_\_\_
  - F) Lease Contracts: See attached Appendix A
  - G) Equipment See attached Appendix A
  - E) HST \$\_\_\_\_\_
3. Contemporaneous with the payment of the Cash Purchase Price (being the Total Purchase Price minus the Applicable Cash Reserve Amount), the Seller hereby sells and assigns to the Purchaser, without recourse (except as provided herein or in the Program Agreement), and the Purchaser hereby purchases from the Seller, all of the Seller's right, title and interest in and to the Assigned Payments in respect of all Lease Contracts listed in Appendix A and all Related Assets with respect thereto.

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4. The Seller hereby acknowledges that the Purchaser is relying on all of the representations, warranties, covenants and indemnities in the Program Agreement applicable to this Invoice. The Seller hereby certifies that (i) all the representations and warranties contained in the Program Agreement are true and correct as of the date hereof except as any of such representations and warranties may expressly relate to an earlier date, in which case, such representations and warranties continue to be true and correct as of such earlier date, (ii) no event has occurred and is continuing, or would result from the purchase made under this Invoice, which constitutes a Termination Event or a Potential Termination Event.
5. The Seller certifies that a copy of each Lease Contract listed in Appendix A has been delivered to the Purchaser.
6. This Invoice shall be governed by and interpreted in accordance with the laws of the Province of Ontario.

Address: 156 Duncan Mill Rd., Unit 16  
Toronto, Ontario  
M3B 3N2

Attention: President

Facsimile: 1-877-689-3863

**Ecohome Financial Inc.**

by: \_\_\_\_\_

name:

title:

Address: 302 The East Mall  
Suite 301  
Toronto, ON  
M9B 6B7

Attention: John Nassar

Facsimile:

**Utilecredit Corp.**

by: \_\_\_\_\_

name:

title:



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**Appendix A**  
**List of Purchased Lease Contracts and Equipment**

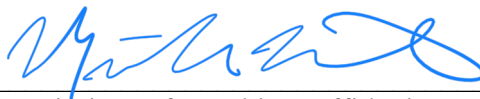
Quantity	Description	Unit Price	Total
----------	-------------	------------	-------

**Exhibit "B"**  
**Form of Lease**

24316759.5

C

**THIS IS EXHIBIT "C"  
TO THE AFFIDAVIT OF BRENT HOULDEN  
SWORN BEFORE ME VIRTUALLY THIS 22<sup>ND</sup> DAY OF MAY, 2020**

A handwritten signature in blue ink, appearing to read 'M. Houlden', is written over a horizontal line.

Commissioner for Taking Affidavits

**UtileCredit Corp.**  
**Lease Reserve Reconciliation**  
**March 31, 2020**

	NBV	5.00%	(Debit)/Credit Reserve	
Outstanding Portfolio	7,532,281.90		376,614.10	
<b>Required Reserve Balance</b>	<u>7,532,281.90</u>		<u>376,614.10</u>	<b>A</b>
Balance in Account at September 1, 2015			0.00	
Reserves Received from New Originations			907,319.57	
Amounts Charged Off related to Bad Debts			(1,811,426.47)	
Amounts Charged Off in Excess of Funding			373,286.83	
Reserve Top Up			136,062.19	
Escalation			332,402.06	
NOSI			(6,434.70)	
Amounts Applied to Client Accounts			(11,407.48)	
Price Adjustment			(11,057.22)	
Enbridge Charges			(77,965.80)	
Other			(149,059.72)	
			<u>(318,280.74)</u>	
Non Performing Assets			(894,870.66)	
<b>Reserve Balance</b>			<u>(1,213,151.40)</u>	<b>B</b>
<b>Excess (Deficiency) at March 31, 2020</b>			<u>(1,589,765.49)</u>	<b>(B)-(A)</b>

D

**THIS IS EXHIBIT "D"  
TO THE AFFIDAVIT OF BRENT HOULDEN  
SWORN BEFORE ME VIRTUALLY THIS 22<sup>ND</sup> DAY OF MAY, 2020**

A handwritten signature in blue ink, appearing to read "M. [unclear]", written in a cursive style.

---

Commissioner for Taking Affidavits

# ECOHOME FINANCIAL INC.

156 Duncan Mill Rd., Unit 16  
Toronto, Ontario  
M3B 3N2

## General Security Agreement

Customer: UTILECREDIT CORP.

Date: August 14, 2015

### SECURITY INTEREST

In consideration of our dealing with or continuing to deal with you, you grant to us a continuing security interest in all of your Assets and Undertakings (defined below) and an assignment of your Accounts (defined below). The Assets and Undertakings over which you have granted us a security interest hereby, the Accounts assigned to us, together with the Proceeds (defined below) thereof, are herein collectively called the "Collateral". You agree that we have not agreed to postpone the time for attachment of the security interest granted hereby with respect to your presently existing Collateral, that such security interest shall attach to any Collateral acquired after the date hereof as soon as you obtain rights in such Collateral and that value has been given.

### INDEBTEDNESS AND LIABILITY SECURED

You agree that the obligations secured by the security interest granted hereby (collectively, the "Obligations") include, without limitation, all your present and future obligations, indebtedness and liability to us, direct and indirect, absolute and contingent, whether matured or not matured, and include all costs and expenses (including legal fees and expenses) incurred by us in connection with our dealings with you.

#### 1. DEFINITIONS OF COLLATERAL

**ASSETS AND UNDERTAKINGS** - all of your present and after acquired personal property and undertakings including without limitation, Accounts, Inventory, Equipment, Deposits and Credit Balances, Investment Property, Life Insurance (all as defined herein), all intangible and intellectual property, and all real and immovable property both freehold and leasehold, except for the last day of the term of any lease.

**ACCOUNTS** - all debts, accounts, choses in action, claims, demands, and moneys now due, owing, accruing, or which may hereafter become due, owing or accruing to you, together with all rights, benefits, security interests, mortgages, instruments, rights of action, deeds, books and records and documents now or hereafter belonging to you in respect of or as security for any of the foregoing.

**INVENTORY** - all presently owned and after acquired goods and other property held for sale or lease or that have been leased or that are to be furnished or have been furnished under a contract of service, or that are raw materials, work in process, or materials used or consumed in your business or profession.

**EQUIPMENT** - all presently owned and after acquired goods that are owned by you other than Inventory and consumer goods.

**DEPOSITS AND CREDIT BALANCES** - all monies, deposit and credit balances which are now or may hereafter be on deposit with or standing to your credit with us, and/or with any of our subsidiaries and affiliates, and any amount of interest due or accruing due to you in connection with any such deposit or credit balance.

**INVESTMENT PROPERTY** - all present and future investment property held by you, including securities, shares, options, rights, warrants, joint venture interests, interests in limited partnerships, trust units, bonds, debentures and all other documents which constitute evidence of a share, participation or other interest of yours in property or in an enterprise or which constitute evidence of an obligation of the issuer (collectively called "Investment Property"); and all substitutions therefor and, subject to Section 5, dividends and income derived therefrom.

**LIFE INSURANCE** - the life insurance policy or policies granted by the you from time to time and any proceeds derived therefrom, and any amounts held by the insurer as pre-paid premiums or for the payment of future premiums.

#### 2. INVESTMENT PROPERTY

If any of the Collateral consists of Investment Property, (a) you authorize us to transfer such Collateral or any part thereof into our own name or that of our nominee so that we or our nominee may appear of record as the sole owner of such Collateral; provided, that until the occurrence of any continuing Event of Default, we shall deliver promptly to you all notices, statements or other communications received by us or our nominee as such registered owner, and upon demand and receipt of payment of necessary expenses thereof, shall give you or your designee a proxy or proxies to vote and take all action with respect to such Collateral; provided further that after the occurrence of any continuing Event of Default, you waive all rights to be advised of or to receive any notices, statements or communications received by us or our nominee as such registered owner, and agree that no proxy or proxies given to you or your designee by us shall thereafter be effective; and (b) you further agree to execute such other documents and to perform such other acts, and to cause any issuer or securities intermediary to execute such other documents and to perform such other acts as may be necessary or appropriate in order to give us "control" of such Investment Property, as defined in the *Securities Transfer Act, 2006* (Ontario), which "control" shall be in such manner as we shall designate in our sole judgment and discretion, including, without limitation, an agreement by any issuer or securities intermediary that it will comply with instructions in the case of an issuer or entitlement orders in the case of a securities intermediary, Security Agreement

originated by us, whether before or after the occurrence of any continuing Event of Default, without further consent from you.

#### 3. PROCEEDS

You grant us a security interest on all of your property in any form derived directly or indirectly from any use or dealing with any Assets and Undertakings or Accounts or that indemnifies or compensates for Assets and Undertakings destroyed or damaged (all of which property is herein collectively called "Proceeds"). Proceeds shall be received and held by you in trust for us.

#### 4. INCOME AND INTEREST ON INVESTMENT PROPERTY

Until the occurrence of any continuing Event of Default, you reserve the right to receive all income from or interest on the Collateral consisting of Investment Property, and if we receive any such income or interest prior to the occurrence of any continuing Event of Default, we agree to pay you such income or interest promptly. After the occurrence of any continuing Event of Default, you will not demand or receive any income from or interest on such Collateral, and if you receive any such income or interest, such income or interest shall be held by you in trust for us in the same medium in which received, shall not be commingled with any of your other assets and shall be delivered to us in the form received, properly endorsed to permit collection, not later than the next business day following the day of its receipt. We may apply the net cash receipts from such income or interest to payment of any of the Obligations, provided that we account for and pay over to you any such income or interest remaining after payment in full of the Obligations.

#### 5. COSTS AND EXPENSES

You agree to pay the costs and expenses we incur to enforce this Agreement, register this Agreement or notice of it, repossess, maintain, preserve, repair or sell the Collateral, or appoint a consultant, receiver, receiver and manager or agent, and to pay interest thereon. You also agree to pay all legal costs and fees (including in-house legal fees, charges and expenses), incurred by us to do any of the above or to defend any legal claim or counterclaim by you or others respecting the manner of our enforcement of, or our right to enforce, this Agreement. You will pay the legal fees incurred by us on a solicitor and own client basis.

#### 6. FREE AND CLEAR

You hereby represent and warrant to us that you are the owner of the Collateral free from any hypothec, mortgage, lien, charge, security interest or any other interest or claim including any proprietary or trust interest or encumbrance claimed by any third party. You hereby covenant and agree to keep the Collateral free and clear of all taxes, assessments, and security or proprietary interests in favour of third parties. You hereby covenant and agree to not sell, give away, part with possession of or otherwise dispose of any part of the Collateral, (except Inventory sold in the normal course of business and obsolete equipment) without our prior written consent

#### 7. INSURANCE

You will, at your cost, keep the Collateral insured from all risk of loss, theft or damage as are customarily insured by businesses in the industry in which you are engaged. If requested, you will provide us with a copy of the insurance policy. The insurance policy will name us as first loss payee and additional insured. We may, in our absolute discretion, pay any premium due on any insurance policy, including any life insurance policy forming part of the Collateral, and the amount of any premium we pay will be added to and form part of the Obligations.

#### 8. LOCATION OF COLLATERAL

You will keep the Collateral at the address shown below your signature to this Agreement. You will not remove the Collateral from this location (except in the ordinary course of your business) without our prior written consent.

#### 9. LIMITATION ON OBLIGATIONS OF ECOHOME

Our sole obligation with respect to the custody, safekeeping and physical preservation of Collateral in our possession shall be to use reasonable care in the



custody and safekeeping thereof, and we shall be deemed to have used reasonable care if we deal with such Collateral in the same manner as we deal with similar property for our own account. Neither we nor any of our directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon the Collateral or any part thereof or for any delay in doing so, or shall be under any obligation to sell or otherwise dispose of any Collateral whether at your request or otherwise.

#### 10. REPRESENTATIONS AND WARRANTIES

You hereby represent and warrant to us that:

- (a) if applicable, you are a corporation duly existing, or a partnership duly established, under the laws of the jurisdiction of your incorporation or establishment, have all necessary power and authority to own your property and assets, to carry on your business as currently carried on by you and hold all necessary licenses, permits and consents as are required so to own your property and assets and so to carry on business in each jurisdiction in which you do so;
- (b) you have the capacity, power and authority and the legal right to execute and deliver, to perform your obligations under, this Agreement, and have taken all necessary action, corporate or otherwise, to authorize the execution and delivery of this Agreement and the performance of your obligations hereunder;
- (c) this Agreement constitutes a legal, valid and binding obligation of yours enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity;
- (d) except for consents which have been obtained and are in full force and effect, no consent of any person is required, or purports to be required, in connection with the execution and delivery of this Agreement by you or the performance of your obligations hereunder;
- (e) the execution and delivery by you of this Agreement and the performance of your obligations hereunder will not violate any applicable law or contractual obligation applicable to you; and
- (f) the representations and warranties set out in clauses (a) through (e) above or in any certificate or other document delivered to us by you or on your behalf are material, shall be deemed to have been relied upon by us notwithstanding any investigation heretofore or hereafter made by us or on our behalf, shall survive the execution and delivery of this Agreement and shall continue in full force and effect without time limit.

#### 11. REPORTING

You will:

- (a) if you are a corporation, a partnership or a sole proprietorship, provide to us accountant-prepared financial statements within 120 days of each of your fiscal year ends;
- (b) if you are an individual, provide to us your personal net worth statement upon request by us;
- (c) advise us of any Event of Default immediately upon the occurrence of such event;
- (d) inform us of any actual or probable material litigation and provide us with copies of all relevant documents upon request; and
- (e) provide us with such other information and financial data as we may request from time to time.

#### 12. POSITIVE COVENANTS

You agree to:

- (a) make all payments when due or demanded to us (without any condition, deduction, set-off or holdback) at our address noted above (or any other address that we advise);
- (b) if applicable, maintain your existence as a corporation, partnership, or sole proprietorship, as the case may be, and keep all material agreements, rights, franchises, licences, operations, contracts or other arrangements in full force and effect;
- (c) pay all taxes, which may result in a lien or charge on any of your property and assets;
- (d) maintain, protect and preserve the Collateral in good repair and working condition;
- (e) provide such security as we may require;
- (f) continue to carry on, and maintain in good standing, the business being carried on by you at the date hereof;
- (g) permit us or our authorized representatives full and reasonable access to your premises, business, financial and computer records and allow the duplication or extraction of pertinent information therefrom;

- (h) notify us in writing at least 20 days prior to any change of your name; and
- (i) notify us in writing promptly of any significant loss of or damage to the Collateral.

#### 13. NEGATIVE COVENANTS

You will not:

- (a) create, incur, assume, or suffer to exist, any mortgage, deed of trust, pledge, lien, security interest, assignment, charge, or encumbrance (including without limitation, any conditional sale, or other title retention agreement, or finance lease) of any nature, upon or with respect to the Collateral, or sign or file under the *Personal Property Security Act* (Ontario) (the "PPSA") or similar registry system of any jurisdiction a financing statement which names you as a debtor, or sign any security agreement authorizing any secured party thereunder to file such financing statement creating a security interest in the Collateral which ranks superior to us and excluding purchase money security interests;
- (b) if you are a corporation, a partnership or a sole proprietorship, as the case may be, permit any change of ownership or change your capital structure without our prior written consent, such consent not to be unreasonably withheld; or
- (c) transfer your interest in any part of the Collateral not expressly permitted under this Agreement or change the location(s) of the Collateral without our prior written consent.

#### 14. DEFAULT

You shall be in default under this Agreement upon the happening of any of the following events (each, an "Event of Default"):

- (a) you or any other person liable for the Obligations is in default under any agreement relating to the Obligations or any part thereof;
- (b) you or any other person liable for the Obligations is in default under any other loan, debt or obligation in excess of \$50,000 owed to anyone else, subject to the passage of any applicable grace period;
- (c) you fail to perform any of the terms or conditions of this Agreement or any other agreement between you and us;
- (d) you become insolvent or bankrupt or make an assignment for the benefit of creditors or consent to the appointment of a trustee or receiver, or a trustee or receiver shall be appointed for you or for a substantial part of your property without your consent;
- (e) bankruptcy, reorganization or insolvency proceedings shall be instituted by or against you;
- (f) any statement made by you to induce us to extend credit to you was false in any material respect when made, or becomes false;
- (g) anyone takes possession of or applies to any court for possession of the Collateral, or anyone claims to have rights in the Collateral superior to our rights except as set out in section 13(a) above;
- (h) if you are an individual, you are declared incompetent by a court, or you die, or, if you are a partnership, a partner dies; or
- (i) you fail to deliver to us on a timely basis the financial information required by any agreement between us.

#### 15. REMEDIES

Upon the occurrence of an Event of Default, we may require you to repay any or all of the Obligations in full, whether matured or not, and we may enforce this Agreement by any method permitted by law, and we may exercise any rights and remedies under applicable law, and we may appoint any person, including our employee, to be an agent, a receiver or receiver and manager (the "Receiver") of the Collateral. We and the Receiver shall be entitled to:

- (a) seize and possess the Collateral;
- (b) carry on your business;
- (c) sell, lease or otherwise dispose of the Collateral;
- (d) foreclose on the Collateral;
- (e) in the case of Life Insurance, exercise any options available to you under the Life Insurance;
- (f) demand, sue for and receive Accounts, give effectual receipts and discharges for the Accounts, compromise any Accounts which may seem bad or doubtful to us and give time for payment thereof with or without security;
- (g) make any arrangement or compromise in our interest, or
- (h) take any other action deemed necessary to carry into effect the provisions of this Agreement.

The Receiver shall be your agent and you shall be solely responsible for the Receiver's actions. We shall not be in any way responsible for any misconduct or negligence on the part of the Receiver. If the proceeds of the realization of the Collateral are insufficient to repay us the Obligations in full, then you forthwith shall pay us such deficiency. The rights and powers in this paragraph are supplemental to and not in substitution for any other rights we may have from time to time.

#### 16. POWER OF ATTORNEY

You irrevocably appoint us your attorney, with power of substitution and appointment, to sign for you, at our option, all documents necessary or desirable to permit us to exercise any of our rights and remedies under this Agreement, with the right to use your name and to take proceedings in your name.

**17. NON WAIVER BY US**

Any breach by you of this Agreement or the occurrence of an Event of Default may only be waived by us in writing. Any waiver by us does not mean that any subsequent breach or Event of Default is also waived. Any failure by us to notify you of an Event of Default shall not be deemed to be a waiver of such Event of Default. No course of conduct or omission on our part or on your part shall give rise to any expectation by you that we will not insist on strict compliance with the terms of this Agreement.

**18. DEALING WITH SECURITY INTEREST**

We may take and give up any of the Collateral or modify or abstain from perfecting or taking advantage of our security interest in the Collateral and otherwise deal with any of the Collateral as we shall see fit without prejudice to your liability or to our rights under this Agreement or at law.

**19. PAY ENCUMBRANCES**

We or the Receiver may pay any encumbrance that may exist or be threatened against the Collateral. In addition, we or the Receiver may borrow money required for the maintenance, preservation or protection of the Collateral and may grant further security interests in the Collateral in priority to the secured interest created hereby as security for the money so borrowed. In every such case, the amounts so paid or borrowed together with costs, charges, and expenses incurred in connection therewith shall become part of the Obligations, shall bear interest at the highest rate per annum charged by us on the Obligations and shall be secured by this Agreement.

**20. PAYMENTS**

We shall have the right to appropriate any payment made by you to any of your Obligations as we see fit, and to revoke or alter any such appropriation.

**21. DEFINITIONS**

In this agreement "you", "your" and "yours" refer to the Customer named above. "We", "our", "ours", and "us" refer to Ecohome Financial Inc.

**22. CONTINUING EFFECTIVENESS**

This Agreement shall be a continuing agreement in every respect, securing the payment of the Obligations. If any part of this Agreement is invalid or void, the remaining terms and provisions of this Agreement shall remain in full force and effect.

**23. ACKNOWLEDGEMENT & WAIVER**

You acknowledge receipt of a copy of this Agreement. You waive any right you may have to receive a copy of any financing statement, verification statement, or similar document we register or that we may receive by way of confirmation of a security registration in respect of this Agreement or any agreement amending, supplementing or replacing it.

**24. SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon you, your heirs and your successors and assigns and shall enure to our benefit and to the benefit of our successors and assigns; provided that you shall not assign any of your rights or obligations hereunder without our prior written consent. We may

assign our rights under this Agreement without your consent and without providing you notice of such assignment. This Agreement shall continue in full force and effect notwithstanding any change in the composition of or membership of any firm or corporation, which is a party hereto.

**25. NOTICES**

Any notice required to be given under this Agreement may be delivered directly to you or us or may be sent by prepaid registered mail addressed to our address shown above or your address shown below, or such further address as we or you may notify to the other in writing from time to time, and if so given the notice shall be deemed to have been given on the day of delivery or the day when it is deemed or otherwise considered to have been received for the purposes of the PPSA, as the case may be.

**26. DISCHARGE**

If you pay us all of the Obligations secured by this Agreement and otherwise observe and perform the terms and conditions hereof, then we shall, at your request and expense, release and discharge the security interest created by this Agreement and execute and deliver to you such deeds and other instruments as shall be required to effect any such release and discharge.

**27. ENTIRE AGREEMENT**

You acknowledge that this is the entire agreement between you and us and there are no other written or oral representations or warranties, which apply to the Collateral or to this Agreement. This Agreement may only be amended by an agreement in writing signed by us.

**28. NO MERGER**

Neither the taking of any judgment nor the exercise of any power of seizure or sale shall operate to extinguish your liability to make payment of or satisfy the Obligations.

**29. FURTHER ASSURANCES**

You shall at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered every such further act, deed, conveyance, instrument, transfer, assignment, security agreement and assurance as we may reasonably require in order to give effect to the provisions and purposes of this Agreement.

**30. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

BY: \_\_\_\_\_  
Name: John Nassar  
Title: President

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: \_\_\_\_\_  
302 The East Mall, Suite 301  
Toronto, Ontario  
M9B 6C7

**E**

**THIS IS EXHIBIT "E"  
TO THE AFFIDAVIT OF BRENT HOULDEN  
SWORN BEFORE ME VIRTUALLY THIS 22<sup>ND</sup> DAY OF MAY, 2020**

A handwritten signature in blue ink, appearing to read "M. P. ...", is written above a horizontal line.

Commissioner for Taking Affidavits

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: Utilecredit Corp.

FILE CURRENCY: May 20, 2020

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 2 ENQUIRY PAGE : 1 OF 6

SEARCH : BD : UTILECREDIT CORP.

00 FILE NUMBER : 709092315 EXPIRY DATE : 18AUG 2028 STATUS :  
 01 CAUTION FILING : PAGE : 001 OF 1 MV SCHEDULE ATTACHED :  
 REG NUM : 20150818 1559 1793 7045 REG TYP: P PPSA REG PERIOD: 5  
 02 IND DOB : IND NAME:  
 03 BUS NAME: UTILECREDIT CORP.  
 OCN :  
 04 ADDRESS : 302 THE EAST MALL, SUITE 301  
 CITY : ETOBICOKE PROV: ON POSTAL CODE: M9B6C7  
 05 IND DOB : IND NAME:  
 06 BUS NAME:  
 OCN :  
 07 ADDRESS :  
 CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

ECOHOME FINANCIAL INC.

09 ADDRESS : 156 DUNCAN MILL ROAD, UNIT 16

CITY : TORONTO PROV: ON POSTAL CODE: M3B3N2  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE

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 YEAR MAKE MODEL V.I.N.

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GENERAL COLLATERAL DESCRIPTION

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16 AGENT: AIRD & BERLIS LLP (125708-JPF)

17 ADDRESS : 181 BAY STREET, SUITE 1800

CITY : TORONTO PROV: ON POSTAL CODE: M5J2T9

CONTINUED

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: Utilecredit Corp.

FILE CURRENCY: May 20, 2020

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 2 ENQUIRY PAGE : 2 OF 6

SEARCH : BD : UTILECREDIT CORP.

FILE NUMBER 709092315

PAGE	TOT	REGISTRATION NUM	REG TYPE
01	CAUTION :	01 OF 001 MV SCHED:	20191001 1406 1462 0058
21	REFERENCE FILE NUMBER : 709092315		
22	AMEND PAGE:	NO PAGE:	CHANGE: B RENEWAL REN YEARS: 8 CORR PER:
23	REFERENCE DEBTOR/ IND NAME:		
24	TRANSFEROR: BUS NAME: UTILECREDIT CORP.		

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFEE:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY :	PROV :	POSTAL CODE :						
CONS.	MV	DATE OF	NO FIXED					
GOODS	INVTRY	EQUIP	ACCTS	OTHER	INCL	AMOUNT	MATURITY OR	MAT DATE
10								
11								
12								
13								
14								
15								

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16 NAME : AIRD & BERLIS LLP

17 ADDRESS : 181 BAY STREET, SUITE 1800, BOX# 754

CITY : TORONTO PROV : ON POSTAL CODE : M5J2T9

END OF FAMILY

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: Utilecredit Corp.

FILE CURRENCY: May 20, 2020

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 2 OF 2 ENQUIRY PAGE : 3 OF 6

SEARCH : BD : UTILECREDIT CORP.

00 FILE NUMBER : 750577923 EXPIRY DATE : 26APR 2023 STATUS :  
 01 CAUTION FILING : PAGE : 001 OF 2 MV SCHEDULE ATTACHED :  
 REG NUM : 20190426 1651 1590 5159 REG TYP: P PPSA REG PERIOD: 4  
 02 IND DOB : IND NAME:  
 03 BUS NAME: UTILECREDIT CORP.  
 OCN :  
 04 ADDRESS : 302 THE EAST MALL, SUITE 301  
 CITY : TORONTO PROV: ON POSTAL CODE: M9B 6C7  
 05 IND DOB : IND NAME:  
 06 BUS NAME:  
 OCN :  
 07 ADDRESS :  
 CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :  
 ENBRIDGE GAS DISTRIBUTION INC.  
 09 ADDRESS : 500 CONSUMERS ROAD  
 CITY : TORONTO PROV: ON POSTAL CODE: M2J 1P8  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
 10 X X  
 YEAR MAKE MODEL V.I.N.  
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 12

GENERAL COLLATERAL DESCRIPTION

13 LATE RENEWAL OF REGISTRATION NUMBER 20140306 1535 1590 7925  
 14 (REFERENCE FILE NUMBER 694229724) WHICH EXPIRED ON MARCH 6, 2019.  
 15  
 16 AGENT: DENTONS CANADA LLP (RA/DAUGUSTINOVIC)  
 17 ADDRESS : 400-77 KING STREET WEST TORONTO-DOMINION  
 CITY : TORONTO PROV: ON POSTAL CODE: M5K 0A1

CONTINUED

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*



MINISTRY OF CONSUMER AND BUSINESS SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: Utilecredit Corp.

FILE CURRENCY: May 20, 2020

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 2 OF 2 ENQUIRY PAGE : 4 OF 6

SEARCH : BD : UTILECREDIT CORP.

00 FILE NUMBER : 750577923 EXPIRY DATE : 26APR 2023 STATUS :  
 01 CAUTION FILING : PAGE : 002 OF 2 MV SCHEDULE ATTACHED :  
 REG NUM : 20190426 1651 1590 5159 REG TYP: REG PERIOD:  
 02 IND DOB : IND NAME:  
 03 BUS NAME:  
 OCN :  
 04 ADDRESS :  
 CITY : PROV: POSTAL CODE:  
 05 IND DOB : IND NAME:  
 06 BUS NAME:  
 OCN :  
 07 ADDRESS :  
 CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :  
 BNY TRUST COMPANY OF CANADA  
 09 ADDRESS : 320 BAY STREET, P.O. BOX 1  
 CITY : TORONTO PROV: ON POSTAL CODE: M5H 4A6  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
 10  
 YEAR MAKE MODEL V.I.N.  
 11  
 12

GENERAL COLLATERAL DESCRIPTION

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16 AGENT:

17 ADDRESS :

CITY : PROV: POSTAL CODE:

CONTINUED

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: Utilecredit Corp.

FILE CURRENCY: May 20, 2020

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 2 OF 2 ENQUIRY PAGE : 5 OF 6

SEARCH : BD : UTILECREDIT CORP.

FILE NUMBER 750577923

PAGE TOT REGISTRATION NUM REG TYPE  
 01 CAUTION : 001 OF 2 MV SCHED: 20191023 1538 1590 8365

21 REFERENCE FILE NUMBER : 750577923

22 AMEND PAGE: NO PAGE: X CHANGE: A AMNDMNT REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME: UTILECREDIT CORP.

25 OTHER CHANGE:

26 REASON: TO REFLECT THE NEW NAME OF THE SECURED PARTY PURSUANT TO AN  
 27 /DESCR: AMENDMENT, TO DELETE BNY TRUST COMPANY OF CANADA AS A SECURED PARTY,  
 28 : AND TO REPLACE THE GENERAL COLLATERAL DESCRIPTION IN ITS ENTIRETY.

02/05 IND/TRANSFEE:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

ENBRIDGE GAS INC.

09 ADDRESS : 500 CONSUMERS ROAD

CITY : TORONTO PROV : ON POSTAL CODE : M2J 1P8

CONS. MV DATE OF NO FIXED

GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

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13 ANY AND ALL ACCOUNTS OF THE DEBTOR, OR ANY RIGHT, TITLE OR INTEREST

14 THEREIN OR THERETO, WHETHER NOW EXISTING OR HEREAFTER CREATED WHICH

15 ARE SUBJECT TO A BILLING AND COLLECTION SERVICES AGREEMENT

16 NAME : DENTONS CANADA LLP (RA/DAUGUSTINOVIC)

17 ADDRESS : 400-77 KING STREET WEST TORONTO-DOMINION

CITY : TORONTO PROV : ON POSTAL CODE : M5K 0A1

CONTINUED

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: Utilecredit Corp.

FILE CURRENCY: May 20, 2020

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 2 OF 2 ENQUIRY PAGE : 6 OF 6

SEARCH : BD : UTILECREDIT CORP.

FILE NUMBER 750577923

PAGE TOT REGISTRATION NUM REG TYPE  
 01 CAUTION : 002 OF 2 MV SCHED: 20191023 1538 1590 8365

21 REFERENCE FILE NUMBER : 750577923

22 AMEND PAGE: NO PAGE: CHANGE: REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME:

25 OTHER CHANGE:

26 REASON:

27 /DESCR:

28 :

02/05 IND/TRANSFEE:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY : PROV : POSTAL CODE :  
 CONS. MV DATE OF NO FIXED  
 GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

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13 ADMINISTERED BY THE SECURED PARTY OR ONE OF ITS AFFILIATES FROM TIME

14 TO TIME.

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16 NAME :

17 ADDRESS :

CITY : PROV : POSTAL CODE :

LAST SCREEN

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

F

**THIS IS EXHIBIT "F"  
TO THE AFFIDAVIT OF BRENT HOULDEN  
SWORN BEFORE ME VIRTUALLY THIS 22<sup>ND</sup> DAY OF MAY, 2020**

A handwritten signature in blue ink, appearing to be 'M-H-W', is written above a horizontal line.

Commissioner for Taking Affidavits

**Wiffen, Bradley**

---

**From:** Peter Soon <PSoon@ecohomefinancial.com>  
**Sent:** Thursday, February 27, 2020 3:27 PM  
**To:** Kathryn Houlden; Daphne Hooper; Brent Houlden  
**Subject:** Fwd: Utilecredit Debt Owing

FYI

PS

Begin forwarded message:

**From:** John Nassar <[john.nassar@81capital.com](mailto:john.nassar@81capital.com)>  
**Date:** February 27, 2020 at 3:26:33 PM EST  
**To:** Peter Soon <[PSoon@ecohomefinancial.com](mailto:PSoon@ecohomefinancial.com)>  
**Subject:** Re: Utilecredit Debt Owing

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Mr. Soon, UtileCredit Corporation is insolvent. The company has no funds to settle this amount.

Thanks!

John Nassar  
CND: 416-318-1272  
USA: 305-399-2633

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This e-mail may be privileged and/or confidential, and the sender does not waive any related rights and obligations. Any distribution, use or copying of this e-mail or the information it contains by other than an intended recipient is unauthorized. If you received this e-mail in error, please advise me (by return e-mail or otherwise) immediately.

---

**From:** Peter Soon <[PSoon@ecohomefinancial.com](mailto:PSoon@ecohomefinancial.com)>  
**Date:** Thursday, February 27, 2020 at 3:24 PM  
**To:** John Nassar <[john.nassar@81capital.com](mailto:john.nassar@81capital.com)>  
**Subject:** Utilecredit Debt Owing

Hi John,

As you know, Utilecredit's debt is \$1,554,763.36 (not including interest). A copy of the reserve report is reattached for your convenience.

You have not responded to my previous correspondence. We require payment forthwith.

Please reach out immediately to discuss payment logistics.

**Peter Soon**

SVP Operations

905.695.8557 Ext. 1265

[psoon@ecohomefinancial.com](mailto:psoon@ecohomefinancial.com)[www.ecohomefinancial.com](http://www.ecohomefinancial.com)

*Please note: This e-mail may contain confidential and/or privileged information. If you are not the intended recipient (or have received this e-mail in error) please notify the sender immediately and destroy this e-mail. Any unauthorized copying, disclosure or distribution of the material in this e-mail is strictly forbidden. If you are the intended recipient/s, the Information provided without prejudice and the information is not to be copied or circulated without permission from the sender.*

G



**THIS IS EXHIBIT "G"  
TO THE AFFIDAVIT OF BRENT HOULDEN  
SWORN BEFORE ME VIRTUALLY THIS 22<sup>ND</sup> DAY OF MAY, 2020**

A handwritten signature in blue ink, appearing to be "M. M. [unclear]", written in a cursive style.

---

Commissioner for Taking Affidavits



Barristers & Solicitors

Bay Adelaide Centre - West Tower  
333 Bay Street, Suite 3400  
Toronto, Ontario M5H 2S7

Telephone: 416.979.2211  
Facsimile: 416.979.1234  
goodmans.ca

Direct Line: 416.597.4208  
bwiffen@goodmans.ca

March 3, 2020

**VIA COURIER AND EMAIL**

**PRIVATE & CONFIDENTIAL**

Utilecredit Corp.  
302 The East Mall, Suite 301  
Toronto, ON M9B 6C7

**Attention: Mr. John Nassar**

Dear Sirs:

**Re: Indebtedness of Utilecredit Corp. (the “Company”) to EcoHome Financial Inc.  
 (“EcoHome”)**

We are writing on behalf of our client, EcoHome Financial Inc. As you know, EcoHome and the Company are party to an Amended and Restated Consumer Lease Program Agreement dated January 6, 2016 (the “**Program Agreement**”). Capitalized terms used and not defined herein have the meanings given to them in the Program Agreement.

The Company is in default of its obligations under the Program Agreement, including, without limitation, as a result of the Company’s failure to remit funds to EcoHome to restore the Cash Reserve Account to the Required Reserve Amount as required pursuant to Section 2.02 of the Program Agreement. The principal amount required to be remitted by the Company to EcoHome is not less than \$1,554,763.36 as at December 31, 2019. I understand that Peter Soon of EcoHome demanded the repayment of this amount from the Company in email correspondence to you dated February 14, 2020 and February 27, 2020. The Company’s failure to pay this amount to EcoHome constitutes a Termination Event under the Program Agreement.

On behalf of EcoHome, we hereby demand payment in full of the sum of \$1,554,763.36, together with all applicable interest and all other applicable losses, costs, fees, charges and expenses (including legal fees and expenses) of EcoHome incurred or to be incurred for which the Debtor is responsible pursuant to the Program Agreement, the General Security Agreement or at law (collectively, the “Indebtedness”).

The Indebtedness is secured by a General Security Agreement dated August 14, 2015 granted by the Company to EcoHome (the “General Security Agreement”). Should payment of the Indebtedness not be received forthwith, EcoHome shall take whatever actions it deems necessary or appropriate to recover the Indebtedness and to exercise its rights under the Program Agreement and the General Security Agreement.

Pursuant to Section 5.01 of the Program Agreement, the Company is required to provide EcoHome with financial statements and such other additional financial and other information relating to the Company as EcoHome may from time to time reasonably request. Please send to us, within three business days of this letter, copies of the latest quarterly and annual financial statements of the Company.

On behalf of EcoHome, we also enclose herewith a Notice of Intention to Enforce a Security pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada). EcoHome reserves all of its rights and remedies against the Company and its business, assets and property and to take such actions as it deems necessary or appropriate to recover payment in full of the Indebtedness, all without further notice to the Company.

Yours truly,

**Goodmans LLP**



Bradley Wiffen  
Encl.

cc. Peter Soon, EcoHome Financial Inc.

**NOTICE OF INTENTION TO ENFORCE A SECURITY**  
**(Bankruptcy and Insolvency Act, Subsection 244(1))**  
By Registered Mail and Email

**TO:** Utilecredit Corp.  
302 The East Mall, Suite 301  
Toronto, ON M9B 6C7

, an insolvent person.

**TAKE NOTICE** that:

1. EcoHome Financial Inc. (“**EcoHome**”), a secured creditor, intends to enforce its security on the present and future property, assets and undertakings of Utilecredit Corp. (the “**Debtor**”) and all proceeds thereof, including, without limiting the generality of the foregoing, all of the intangibles, accounts receivable, proceeds, books and records, equipment, inventory and all other real and immovable and personal and moveable property of the Debtor.
2. The security that is to be enforced is a general security agreement dated August 14, 2015 granted by the Debtor in favour of EcoHome (the “**General Security Agreement**”), which grants EcoHome, amongst other things, a security interest in the collateral described therein (the “**Security**”).
3. The total amount of indebtedness secured by the Security is the amount of not less than \$1,554,763.36 as at December 31, 2019, together with all other losses, costs, fees, charges and expenses of EcoHome incurred or to be incurred for which the Debtor is responsible pursuant to the Amended and Restated Program Agreement dated as of January 6, 2016, the General Security Agreement or at law.
4. EcoHome will not have the right to enforce the Security until after the expiry of the 10-day period after this notice is sent unless the insolvent person consents to an earlier enforcement.

*[Remainder of page intentionally left blank]*

DATED at Toronto this 3<sup>rd</sup> day of March, 2020.

**ECOHOME FINANCIAL INC.**  
by its solicitors, Goodmans LLP

Per: 

---

Bradley Wiffen  
Bay Adelaide Centre – West Tower  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7  
Tel: 416-597-4208  
Fax: 416-979-1234

**ACKNOWLEDGMENT AND CONSENT**  
**(*Bankruptcy and Insolvency Act*, Subsection 244(1))**

**TO: ECOHOME FINANCIAL INC.**  
**and its solicitors, Goodmans LLP**

Utilecredit Corp. hereby acknowledges the receipt of a Notice of Intention to Enforce a Security of EcoHome Financial Inc. pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* dated March 3, 2020 delivered by EcoHome Financial Inc.'s solicitors (the "**Notice**"), and hereby irrevocably and unconditionally consents to the immediate enforcement of the security referred to in the Notice and expressly waives the ten (10) day notice period set forth in the Notice.

**DATED** this \_\_\_\_\_ day of March, 2020

**UTILECREDIT CORP.**

Per: \_\_\_\_\_  
Name:  
Title:

H

**THIS IS EXHIBIT "H"  
TO THE AFFIDAVIT OF BRENT HOULDEN  
SWORN BEFORE ME VIRTUALLY THIS 22<sup>ND</sup> DAY OF MAY, 2020**

A handwritten signature in blue ink, appearing to read "M. J. [unclear]", positioned above a horizontal line.

Commissioner for Taking Affidavits



**Wiffen, Bradley**

---

**From:** John Nassar <john.nassar@81capital.com>  
**Sent:** Tuesday, March 3, 2020 5:23 PM  
**To:** Wiffen, Bradley  
**Cc:** Wadden, Jason; Peter Soon  
**Subject:** Re: Demand Letter and Notice of Intention to Enforce Security  
**Attachments:** CONSUMER LEASE PROGRAM AGREEMENT - Utilecredit Corp 2015 - Amended 2016.pdf; Consumer Lease Program Agreement (Executed).pdf

Mr. Wiffen, please note that I am the president of UtileCredit Corp. I am in receipt of your letter to the company of today.

I have previously exchanged emails with Mr. Soon on the financial condition of UtileCredit. In addition I turn your attention to section 2.03 of the Program Agreement that talks to the Limited Recourse nature of the program. Furthermore the Cash Reserve top up is a function of the Purchase Transaction process which your client has not engaged in with UtileCredit for many years.

I have not reviewed your GSA so I can't comment on its nature but regardless your client's recourse is as setout above.

Sincerely,  
 John Nassar  
 CND: 416-318-1272  
 USA: 305-399-2633

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**From:** "Wiffen, Bradley" <bwiffen@goodmans.ca>  
**Date:** Tuesday, March 3, 2020 at 1:27 PM  
**To:** John Nassar <john.nassar@81capital.com>  
**Cc:** "Wadden, Jason" <jwadden@goodmans.ca>, Peter Soon <PSoon@ecohomefinancial.com>  
**Subject:** Demand Letter and Notice of Intention to Enforce Security

Good afternoon,

We are legal counsel to EcoHome Financial Inc. Please see the attached correspondence. A copy of the attached was also delivered to Utilecredit Corp's offices earlier today.

Regards,  
 Brad

**Bradley Wiffen**

Goodmans LLP

416.597.4208  
[bwiffen@goodmans.ca](mailto:bwiffen@goodmans.ca)  
 Bay Adelaide Centre  
 333 Bay Street, Suite 3400  
 Toronto, ON M5H 2S7

I

**THIS IS EXHIBIT "I"  
TO THE AFFIDAVIT OF BRENT HOULDEN  
SWORN BEFORE ME VIRTUALLY THIS 22<sup>ND</sup> DAY OF MAY, 2020**

A handwritten signature in blue ink, appearing to read "Marilyn W.", is written above a horizontal line.

Commissioner for Taking Affidavits



Barristers & Solicitors

Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, Ontario M5H 2S7

Telephone: 416.979.2211  
Facsimile: 416.979.1234  
goodmans.ca

Direct Line: 416.597.4208  
bwiffen@goodmans.ca

May 19, 2020

**VIA EMAIL**

Utilecredit Corp.  
302 The East Mall, Suite 301  
Toronto, ON M9B 6C7

**Attention: Mr. John Nassar (john.nassar@81capital.com)**

Dear Sir:

**Re: Indebtedness of Utilecredit Corp. (“Utilecredit”) to EcoHome Financial Inc. (“EcoHome”)**

As you know, we are counsel to EcoHome Financial Inc. We are writing further to our letter dated March 3, 2020 (the “**Demand Letter**”) in which we demanded payment of the indebtedness owing by Utilecredit to EcoHome and delivered a notice of intention to enforce security dated March 3, 2020 pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**Enforcement Notice**”).

As described in the Demand Letter, Utilecredit has committed breaches and is in default of its obligations under the Amended and Restated Consumer Lease Program Agreement dated January 6, 2016 (the “**Program Agreement**”). The amount owing by Utilecredit to EcoHome as at December 31, 2019 is not less than \$1,554,763.36, plus interest and all applicable costs, fees, charges and expenses (including legal fees and expenses) of EcoHome incurred or to be incurred for which Utilecredit is responsible pursuant to the Program Agreement, the General Security Agreement dated August 15, 2015 (the “**General Security Agreement**”) or at law (collectively, the “**Indebtedness**”).

In email correspondence to us dated March 3, 2020 in reply to the Demand Letter, you did not dispute that amounts were owing but indicated that EcoHome had limited recourse to Utilecredit in light of section 2.03 of the Program Agreement. However, it is clear pursuant to sections 2.03 and 5.01(j) of the Program Agreement that Utilecredit indemnified EcoHome against all damages and liabilities incurred by EcoHome arising from the failure of Utilecredit to observe its obligations under the Program Agreement and that there is no limitation on EcoHome’s recourse to the assets of Utilecredit.

We hereby demand payment in full of the Indebtedness on or prior to May 22, 2020. This is the fourth time since February 14, 2020 that EcoHome, or counsel on its behalf, has demanded payment of the Indebtedness. If, as you have stated, Utilecredit is insolvent and does not have the funds to settle the Indebtedness, we expect that you will cooperate with EcoHome in pursuing its



rights and remedies as a secured creditor of Utilecredit. The resolution of this matter on a consensual basis will reduce the costs and expenses of EcoHome in obtaining repayment, all of which form part of the Indebtedness for which Utilecredit is liable.

Please send to us, within three business days of this letter, copies of the latest quarterly and annual financial statements of Utilecredit, which Utilecredit is required to provide pursuant to Section 5.01 of the Program Agreement. These financial statements were requested in the Demand Letter and have not been provided.

As the statutory waiting period following the delivery of the Enforcement Notice has expired, EcoHome is in a position to exercise its rights and remedies under the Program Agreement and the General Security Agreement. EcoHome reserves all of its rights and remedies to take such actions as it deems necessary or appropriate to recover payment in full of the Indebtedness, all without further notice.

Yours truly,

**Goodmans LLP**

A handwritten signature in black ink, appearing to read "Bradley Wiffen".

Bradley Wiffen

cc. Peter Soon, EcoHome Financial Inc.

J

**THIS IS EXHIBIT "J"  
TO THE AFFIDAVIT OF BRENT HOULDEN  
SWORN BEFORE ME VIRTUALLY THIS 22<sup>ND</sup> DAY OF MAY, 2020**

A handwritten signature in blue ink, appearing to read 'M. M. W.', is written above a horizontal line.

Commissioner for Taking Affidavits

**Wiffen, Bradley**

---

**From:** John Nassar <john.nassar@81capital.com>  
**Sent:** Tuesday, May 19, 2020 2:54 PM  
**To:** Wiffen, Bradley  
**Cc:** Wadden, Jason  
**Subject:** Re: Utilecredit Corp. - Demand Letter

Mr. Wiffen, I think your letter sets out clearly the position of your client and in fact the position of Utilecredit Corp. I am not sure what can be do further? We don't want to make this harder on both parties where your client spends good money to confirm what we have already told them. We won't be providing financial statements, partly because your client is in breach of their reporting obligations to Utilecredit and partly because the statements are not available. We will provide a letter from our account to confirm that the company is in fact insolvent, as a compromise. Please advise.

Thanks!

John Nassar  
 CND: 416-318-1272  
 USA: 305-399-2633

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**From:** "Wiffen, Bradley" <bwiffen@goodmans.ca>  
**Date:** Tuesday, May 19, 2020 at 9:19 AM  
**To:** John Nassar <john.nassar@81capital.com>  
**Cc:** "Wadden, Jason" <jwadden@goodmans.ca>  
**Subject:** Utilecredit Corp. - Demand Letter

Good morning,

We are legal counsel to EcoHome Financial Inc. Please see the attached correspondence in respect of Utilecredit Corp.

**Bradley Wiffen**

Goodmans LLP  
 416.597.4208  
[bwiffen@goodmans.ca](mailto:bwiffen@goodmans.ca)

\*\*\*\*\* Attention \*\*\*\*\*

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**K**

**THIS IS EXHIBIT "K"  
TO THE AFFIDAVIT OF BRENT HOULDEN  
SWORN BEFORE ME VIRTUALLY THIS 22<sup>ND</sup> DAY OF MAY, 2020**

A handwritten signature in blue ink, appearing to read 'M. M. O.', is written above a horizontal line.

Commissioner for Taking Affidavits

**Wiffen, Bradley**

---

**From:** John Nassar <john.nassar@81capital.com>  
**Sent:** Thursday, May 21, 2020 11:25 AM  
**To:** Wiffen, Bradley  
**Cc:** Wadden, Jason  
**Subject:** Re: Utilecredit Corp. - Demand Letter

Respectfully, we will not be doing that. The company has no assets other than the residual value of the contracts your client has purchased. It suspended operations over 2years, has no active office, no staff. If your client wishes to spend the money going to court, etc., they your firm will be the beneficiary.

Thanks!

John Nassar  
CND: 416-318-1272  
USA: 305-399-2633

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**From:** "Wiffen, Bradley" <bwiffen@goodmans.ca>  
**Date:** Thursday, May 21, 2020 at 10:55 AM  
**To:** John Nassar <john.nassar@81capital.com>  
**Cc:** "Wadden, Jason" <jwadden@goodmans.ca>  
**Subject:** RE: Utilecredit Corp. - Demand Letter

Mr. Nassar,

EcoHome has security over all assets and property of Utilecredit Corp. pursuant to the General Security Agreement, which agreement also specifically provides EcoHome with the right to appoint a receiver over Utilecredit Corp. (see section 15). Given your stated desire to minimize legal costs for all parties, kindly execute the attached consent to the enforcement of EcoHome's security, including the appointment of a receiver over the assets and property of Utilecredit Corp.

Regards,  
Brad

**Bradley Wiffen**  
Goodmans LLP

416.597.4208  
[bwiffen@goodmans.ca](mailto:bwiffen@goodmans.ca)

**From:** John Nassar <[john.nassar@81capital.com](mailto:john.nassar@81capital.com)>  
**Sent:** Wednesday, May 20, 2020 9:50 AM  
**To:** Wiffen, Bradley <[bwiffen@goodmans.ca](mailto:bwiffen@goodmans.ca)>  
**Cc:** Wadden, Jason <[jwadden@goodmans.ca](mailto:jwadden@goodmans.ca)>  
**Subject:** Re: Utilecredit Corp. - Demand Letter

Mr. Bradley, this will require review by a lawyer. Given the company's financial position it won't be able to seek and cover the costs.

Your client's security is in the lease agreements they funded. Which any residual value reverts back to Utilecredit. It would be more appropriate for an agreement to have title transfer to your client for a mutual release. This would avoid legal expense the company can't cover.

Thanks!

John Nassar  
CND: 416-318-1272  
USA: 305-399-2633

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**From:** "Wiffen, Bradley" <[bwiffen@goodmans.ca](mailto:bwiffen@goodmans.ca)>  
**Date:** Wednesday, May 20, 2020 at 9:43 AM  
**To:** John Nassar <[john.nassar@81capital.com](mailto:john.nassar@81capital.com)>  
**Cc:** "Wadden, Jason" <[jwadden@goodmans.ca](mailto:jwadden@goodmans.ca)>  
**Subject:** RE: Utilecredit Corp. - Demand Letter

Mr. Nassar,

In light of your acknowledgment that Utilecredit is insolvent and your desire to proceed efficiently, kindly sign and return to us by PDF a copy of the attached consent.

Regards,

**Bradley Wiffen**  
Goodmans LLP

416.597.4208  
[bwiffen@goodmans.ca](mailto:bwiffen@goodmans.ca)  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7

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**From:** John Nassar <[john.nassar@81capital.com](mailto:john.nassar@81capital.com)>  
**Sent:** Tuesday, May 19, 2020 2:54 PM  
**To:** Wiffen, Bradley <[bwiffen@goodmans.ca](mailto:bwiffen@goodmans.ca)>  
**Cc:** Wadden, Jason <[jwadden@goodmans.ca](mailto:jwadden@goodmans.ca)>  
**Subject:** Re: Utilecredit Corp. - Demand Letter

Mr. Wiffen, I think your letter sets out clearly the position of your client and in fact the position of Utilecredit Corp. I am not sure what can be do further? We don't want to make this harder on both parties where your client spends good money to confirm what we have already told them. We won't be providing financial statements, partly because your client is in breach of their reporting obligations to Utilecredit and partly because the statements are not available. We will provide a letter from our account to confirm that the company is in fact insolvent, as a compromise. Please advise.

Thanks!

John Nassar  
CND: 416-318-1272  
USA: 305-399-2633

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**Date:** Tuesday, May 19, 2020 at 9:19 AM  
**To:** John Nassar <[john.nassar@81capital.com](mailto:john.nassar@81capital.com)>  
**Cc:** "Wadden, Jason" <[jwadden@goodmans.ca](mailto:jwadden@goodmans.ca)>  
**Subject:** Utilecredit Corp. - Demand Letter

Good morning,

We are legal counsel to EcoHome Financial Inc. Please see the attached correspondence in respect of Utilecredit Corp.

**Bradley Wiffen**

Goodmans LLP  
416.597.4208  
[bwiffen@goodmans.ca](mailto:bwiffen@goodmans.ca)

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3

Court File No. CV-20-00636417  
 CL File No.: \_\_\_\_\_

**ONTARIO  
 SUPERIOR COURT OF JUSTICE  
 COMMERCIAL LIST**

THE HONOURABLE	)	●, THE ●
	)	
JUSTICE	)	DAY OF MAY, 2020

**ECOHOME FINANCIAL INC.**

Plaintiff

- and -

**UTILECREDIT CORP.**

Defendant

**RECEIVERSHIP ORDER**

THIS MOTION made by EcoHome Financial Inc. (the “**Plaintiff**”) for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing RSM Canada Limited (“**RSM**”) as receiver and manager (in such capacity, the “**Receiver**”) without security, of all of the assets, undertakings and properties of Utilecredit Corp. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Brent Houlden sworn May 22, 2020 and the Exhibits thereto and on hearing the submissions of counsel for the Plaintiff and such other parties as were present and wished to be heard, no one else appearing although duly served and on reading the consent of RSM to act as the Receiver:

**SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

**APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, RSM is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor of every nature and kind whatsoever and wherever situate, acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the “Property”).

**RECEIVER’S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;



- (d) to engage consultants, appraisers, agents (including the Plaintiff or its representatives), experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness or claims owing to, or by, the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
- (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;
- and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to make an assignment in bankruptcy on behalf of the Debtor and to consent, on behalf of the Debtor, to any bankruptcy application against the Debtor brought by the Plaintiff (a “**Bankruptcy Application**”);

- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, representatives, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver forthwith upon the Receiver’s request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, information technology, cloud storage, software and physical facilities

relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage (including any cloud system), whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

**NO PROCEEDINGS AGAINST THE RECEIVER**

8. THIS COURT ORDERS that, save and except for a Bankruptcy Application and the action against the Debtor by the Plaintiff before the Ontario Superior Court of Justice, Court File No. CV-20-00636417 (as such action may be transferred, the “**Plaintiff’s Action**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

**NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

9. THIS COURT ORDERS that, save and except for a Bankruptcy Application and the Plaintiff’s Action: (i) no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court, and (ii) any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

10. THIS COURT ORDERS that, save and except for a Bankruptcy Application and the Plaintiff’s Action, all rights and remedies against the Debtor, the Receiver, or affecting the Property, including, without limitation, all rights and remedies of Enbridge Gas Distribution Inc. under its agreements with the Debtor, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE RECEIVER**

11. THIS COURT ORDERS that no Person shall discontinue, suspend, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract,

agreement, lease, licence or permit in favour of, for the benefit of, or held by the Debtor, without written consent of the Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### **EMPLOYEES**

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as: (i) the Receiver, on the Debtor's behalf, may terminate the employment of such employees, or (ii) such employees are otherwise terminated by operation of

law. The Receiver shall not be liable for any employee-related liabilities or compensation, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA or otherwise, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

### **PIPEDA**

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall be permitted to disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations

thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER’S LIABILITY**

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER’S ACCOUNTS**

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver’s Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver’s Charge shall form a first charge on the Property in priority to all security interests, trusts (including statutory, deemed and constructive trusts), liens, charges and encumbrances, statutory or otherwise (collectively “**Encumbrances**”), in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that, if requested by the Plaintiff, the Court or any other interested party, the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.



20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$300,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all Encumbrances in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “A” hereto (the “**Receiver’s Certificates**”) for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver’s Certificates.

**SERVICE AND NOTICE**

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (Ontario) (the “**Rules**”), this Order shall constitute an order for substituted service pursuant to Rule 16.04. Subject to Rule 3.01(d), service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <http://www.rsmcanada.com/utilecredit-corp>.

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic message to the Debtor’s creditors or other interested parties and their advisors at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by: (i) electronic message or personal delivery shall be deemed to be received on the date of transmission or delivery, as applicable, (ii) courier shall be deemed to be received on the next business day following the date of forwarding thereof, or (iii) ordinary mail shall be deemed to be received on the third business day after mailing. For greater certainty, any such electronic distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

**GENERAL**

27. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

29. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in a jurisdiction outside of Canada to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

32. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver, the Plaintiff and any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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## SCHEDULE "A"

## RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that RSM Canada Limited, the receiver and manager (the "Receiver") of the assets, undertakings and properties of Utilecredit Corp. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated May ●, 2020 (the "Order") made in an action having Court file number \_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

RSM Canada Limited, solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

Court File No. CV-20-00636417  
CL File No.:

**ECOHOME FINANCIAL INC.**

Plaintiff

and

**UTILECREDIT CORP.**

Defendant

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding Commenced at Toronto

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**RECEIVERSHIP ORDER**

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**GOODMANS LLP**

Barristers & Solicitors  
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Toronto, Canada M5H 2S7

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Lawyers for the Plaintiff

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Revised: January 21, 2014  
~~s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver~~

Court File No. ~~\_\_\_\_\_~~ CV-20-00636417  
 CL File No.: \_\_\_\_\_

ONTARIO  
 SUPERIOR COURT OF JUSTICE  
 COMMERCIAL LIST

THE HONOURABLE \_\_\_\_\_ ) ~~WEEKDAY~~, THE #~~●~~  
 )  
 JUSTICE \_\_\_\_\_ ) DAY OF ~~MONTH~~MAY, ~~20YR~~2020

**PLAINTIFF<sup>1</sup>**

ECOHOME FINANCIAL INC.

Plaintiff

- and -

**DEFENDANT**

UTILECREDIT CORP.

Defendant

**RECEIVERSHIP ORDER**  
**(~~appointing Receiver~~)**

THIS MOTION made by EcoHome Financial Inc. (the "Plaintiff<sup>2</sup>") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing [~~RECEIVER'S NAME~~]RSM Canada Limited ("RSM") as receiver [and manager] (in such ~~capacities~~capacity, the "Receiver") without security, of all of

<sup>1</sup>The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.

<sup>2</sup>Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".



the assets, undertakings and properties of ~~[DEBTOR'S NAME]~~ Utilecredit Corp. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of ~~[NAME]~~ Brent Houlden sworn ~~[DATE]~~ May 22, 2020 and the Exhibits thereto and on hearing the submissions of counsel for ~~[NAMES]~~ the Plaintiff and such other parties as were present and wished to be heard, no one else appearing ~~for [NAME]~~ although duly served ~~as appears from the affidavit of service of [NAME] sworn [DATE]~~ and on reading the consent of ~~[RECEIVER'S NAME]~~ RSM to act as the Receiver;

### SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated<sup>3</sup> so that this motion is properly returnable today and hereby dispenses with further service thereof.

### APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, ~~[RECEIVER'S NAME]~~ RSM is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor of every nature and kind whatsoever and wherever situate, acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

### RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

<sup>3</sup>~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents (including the Plaintiff or its representatives), experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness or claims owing to, or by, the Debtor;

- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings.<sup>4</sup> The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$~~\_\_\_\_\_~~250,000, provided that the aggregate consideration for all such transactions does not exceed \$~~\_\_\_\_\_~~500,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, [or section 31 of the Ontario *Mortgages*

<sup>4</sup>~~This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

Act, as the case may be,<sup>5</sup> shall not be required, ~~and in each case the Ontario Bulk Sales Act shall not apply.~~

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to make an assignment in bankruptcy on behalf of the Debtor and to consent, on behalf of the Debtor, to any bankruptcy application against the Debtor brought by the Plaintiff (a “Bankruptcy Application”);
- (q) ~~(p)~~ to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) ~~(q)~~ to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and

<sup>5</sup>~~If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

(s) ~~(+)~~ to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, representatives, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons") and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver forthwith upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, information technology, cloud storage, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage (including any cloud system),

whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

**NO PROCEEDINGS AGAINST THE RECEIVER**

8. THIS COURT ORDERS that, save and except for a Bankruptcy Application and the action against the Debtor by the Plaintiff before the Ontario Superior Court of Justice, Court File No. CV-20-00636417 (as such action may be transferred, the “Plaintiff’s Action”), no proceeding or enforcement process in any court or tribunal (each, a “Proceeding”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

**NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

9. THIS COURT ORDERS that, save and except for a Bankruptcy Application and the Plaintiff’s Action: (i) no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court, and (ii) any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

10. THIS COURT ORDERS that, save and except for a Bankruptcy Application and the Plaintiff’s Action, all rights and remedies against the Debtor, the Receiver, or affecting the Property, including, without limitation, all rights and remedies of Enbridge Gas Distribution Inc. under its agreements with the Debtor, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE RECEIVER**

11. THIS COURT ORDERS that no Person shall discontinue, suspend, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract,

agreement, lease, licence or permit in favour of, for the benefit of, or held by the Debtor, without written consent of the Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### **EMPLOYEES**

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as: (i) the Receiver, on the Debtor's behalf, may terminate the employment of such employees, or (ii) such employees are otherwise terminated by operation of



law. The Receiver shall not be liable for any employee-related liabilities or compensation, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA or otherwise, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall be permitted to disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## LIMITATION ON ENVIRONMENTAL LIABILITIES

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations

thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### LIMITATION ON THE RECEIVER'S LIABILITY

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### RECEIVER'S ACCOUNTS

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts (including statutory, deemed and constructive trusts), liens, charges and encumbrances, statutory or otherwise (collectively "Encumbrances"), in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.<sup>6</sup>

19. THIS COURT ORDERS that, if requested by the Plaintiff, the Court or any other interested party, the Receiver and its legal counsel shall pass ~~its~~their accounts from time to time,

<sup>6</sup>~~Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### FUNDING OF THE RECEIVERSHIP

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$~~\_\_\_\_\_~~300,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the **“Receiver’s Borrowings Charge”**) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all ~~security interests, trusts, liens, charges and encumbrances, statutory or otherwise,~~Encumbrances in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule **“A”** hereto (the **“Receiver’s Certificates”**) for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

### SERVICE AND NOTICE

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol> <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the Rules of Civil Procedure (Ontario) (the "Rules"), this Order shall constitute an order for substituted service pursuant to Rule ~~16.04 of the Rules of Civil Procedure~~ 16.04. Subject to Rule 3.01(d) ~~of the Rules of Civil Procedure and paragraph 21 of the Protocol~~, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ~~—'<@>':~~ <http://www.rsmcanada.com/utilecredit-corp>.

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or ~~faesimile transmission~~ electronic message to the Debtor's creditors or other interested parties and their advisors at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by ~~courier;~~ (i) electronic message or personal delivery or faesimile shall be deemed to be received on the date of transmission or delivery, as applicable, (ii) courier shall be deemed to be received on the next business day following the date of forwarding thereof, or ~~if sent by~~ (iii) ordinary mail, shall be deemed to be received on the third business day after mailing. For greater certainty, any such electronic distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within

[the meaning of clause 3\(c\) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 \(SOR/DORS\).](#)

## GENERAL

27. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

29. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in ~~the United States~~ [jurisdiction outside of Canada](#) to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

32. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver, [the Plaintiff](#) and ~~to~~ any

other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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SCHEDULE "A"  
RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that ~~[RECEIVER'S NAME]~~RSM Canada Limited, the receiver and manager (the "Receiver") of the assets, undertakings and properties ~~[DEBTOR'S NAME]~~of Utilecredit Corp. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the **"Property"**) appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated ~~the~~ \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ May ●, 2020 (the "Order") made in an action having Court file number \_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

~~[RECEIVER'S NAME]~~ RSM Canada Limited,  
solely in its capacity as Receiver of the Property,  
and not in its personal capacity

Per: \_\_\_\_\_

Name:

Title:



Court File No. CV-20-00636417  
CL File No.:

ECOHOME FINANCIAL INC.

and

UTILECREDIT CORP.

Plaintiff

Defendant

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
Proceeding Commenced at Toronto

RECEIVERSHIP ORDER

GOODMANS

Barristers

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Toronto, Canada M5H 2S7

&

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979-2211

Lawyers for the Plaintiff

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Court File No. CV-20-00636417  
CL File No.: \_\_\_\_\_

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(Commercial List)**

THE HONOURABLE ) , THE  
JUSTICE )  
) DAY OF APRIL 2019

**BETWEEN:**

ECOHOME FINANCIAL INC.

Plaintiff

and

UTILECREDIT CORP. and JOHN NASSAR

Defendants

**ORDER**

THIS MOTION made by EcoHome Financial Inc. (the “Plaintiff”) for an Order transferring this proceeding to the Commercial List was heard in writing this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Brent Houlden sworn May 22, 2020 and the Exhibits thereto and on hearing the submissions of counsel for the Plaintiff and such other parties as were present and wished to be heard.

THIS COURT ORDERS that this proceeding is hereby transferred to the Commercial List.

\_\_\_\_\_

Plaintiff

Respondent

File No.: \_\_\_\_\_

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

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**ORDER**

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**GOODMANS LLP**

Barristers & Solicitors

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Lawyers for the Plaintiff

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Court File No. \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

**ECOHOME FINANCIAL INC.**

Plaintiff

- and -

**UTILECREDIT CORP.**

Defendant

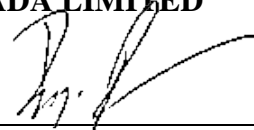
**CONSENT**

The undersigned, RSM Canada Limited (“**RSM**”), hereby consents to the appointment of RSM as receiver and manager, without security, of all of the assets, property and undertakings of Utilecredit Corp. pursuant to the provisions of subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and the terms of an order substantially in the form filed in the above proceeding.

DATED at Toronto this 22<sup>nd</sup> day of May, 2020

**RSM CANADA LIMITED**

Per:



\_\_\_\_\_  
Name: Bryan A. Tannenbaum

Title: President

Court File No. \_\_\_\_\_

**ECOHOME FINANCIAL INC.**

Plaintiff

and

**UTILECREDIT CORP.**

Defendant

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**  
Proceeding Commenced at Toronto

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**CONSENT OF RECEIVER**

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Lawyers for the Plaintiff

**ECOHOME FINANCIAL INC.**  
Plaintiff

-and-

**UTILECREDIT CORP. et al.**  
Respondent

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**MOTION RECORD**  
Motion for Appointment of Receiver  
Returnable May 22, 2020

**GOODMANS LLP**

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